

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 606

LOUIS BUCHALTER, PETITIONER.

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COUNTY COURT OF KINGS COUNTY, STATE OF NEW YORK

No. 610

EMANUEL WEISS, PETITIONER.

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

No. 619

LOUIS CAPONE, PETITIONER.

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COUNTY COURT OF KINGS COUNTY, STATE OF NEW YORK

PETITIONS FOR CERTIORARI FILED

DECEMBER 30, 1942
JANUARY 2, 1943.
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Sol Bernstein—For People—Cross

2401

(AFTERNOON SESSION. TRIAL RESUMED.)

SOL BERNSTEIN, resumed the stand:

By Mr. Talley:

Q. You told the District Attorney about your middle name being Sholem?

Mr. Turkus: Objected to. That is not the statement.

2402

Q. Is that your first name, Sholem? A. No, sir.

Q. What? A. It is my Jewish name.

Q. What is your first name, Sol, isn't it? A. Solomon.

Q. Solomon Sholem Bernstein? A. Yes, ir.

Mr. Talley: What is wrong with that?

Q. What other names have you been known by other than Sholem Bernstein and Solomon Bernstein? A. That is all.

2403

Q. You used the name Berman, didn't you? A. Yes, sir.

Q. Tell us what other names you used besides Berman. A. The only time when I was running, sir.

Q. Is your testimony now that you never used any other name than Sholem besides your own and Berman?

Mr. Turkus: I object. His testimony "now", carrying an implication that it

2404

Sol Bernstein—For People—Cross

might have been something else some other time.

The Court: Sustained.

Mr. Talley: Exception.

Q. You were known in Brownsville as The Chief, weren't you? A. No, sir.

Q. Never heard yourself called The Chief? A. No, sir.

2405

Q. Never heard yourself referred to as The Chief? A. No, sir.

Q. You don't mean that, do you? A. No, sir.

Q. I suppose you mean by that answer, yes, sir. My question is, you don't mean that. Do you want to say that you do mean it or that you don't mean it? A. No, sir.

Q. I will ask you again, to straighten out the record, so as not to take any advantage of that answer. Were you known as The Chief? A. No, sir.

Q. Did you ever hear of the Ali Baba gang? A. No, sir.

2406

Q. Your answer is that you never hear of it? A. No, sir.

Q. And weren't you called the Chief of that gang? A. No, sir.

Q. Wasn't that a gang, or to use your expression, a mob, around Brownsville of which you were the head? A. I know nothing about it, sir.

Q. You know nothing about it? Were you in Florida in 1897, or 1937?

Mr. Turkus: What is the first part of the question?

Q. Were you in Florida in 1937? A. I might have been, sir.

Q. What? A. I might have been, sir.

Q. You might have been any place. My question is were you there? A. I think so, but I am not sure.

Q. Were you there in 1939? A. I am not sure. I might have been.

Q. What is your best recollection? A. I am not sure, sir.

Q. Have you any recollection as to whether you were in Florida in 1939? A. 1939?

2408

Q. Yes. A. I think I was, sir, but I am not sure.

Q. You were working there, weren't you? A. Yes, as a shylock.

Q. You were working as a bounceer, weren't you? A. I don't know what year it was, but I was working in a gambling joint, sir.

Q. Doing what? A. Stepping people they shouldn't cheat.

Q. Stopping the people who would cheat? A. Shouldn't cheat.

2409

Q. What did you call yourself, a spotter? A. Yes, sir.

Q. What was the name of the place in which you were working? A. I don't know what year it was, but I know I was working in the Frolics Club in Miami Beach, a gambling place.

Q. Did you fix that as 1939? A. I don't recall the year. I know I was working there.

Q. Have you any recollection as to when it was? A. Counsellor Barshay can tell you that, sir.

2410

Sol Bernstein—For People—Cross

Q. I am not asking them; I am asking you.

A. I can't remember, sir.

Q. Do you remember who it was that got you the job there? A. Yes, sir.

Q. Who? A. Mendy Weiss.

Q. And who introduced you to Mendy Weiss? A. Louis Capone and Harry Strauss.

Q. They are the ones that introduced you to him? A. A long time ago. I think it was 1935, sir, when I first met him.

2411

Q. Isn't it a fact that you never knew Mendy Weiss until 1939 when he helped you to get a job in Miami, Florida? A. No, sir.

Q. That is not true? A. No, sir.

Q. Did you see Mendy Weiss at or about the time you got the job in the Frolics Club in Miami? A. Yes, sir.

Q. And you asked him to get you the job, didn't you? A. No, sir.

Q. Did he get it for you without your asking him? A. What did you say, sir?

2412

(Question read by reporter.)

A. Yes, sir.

Q. You went down there and he put you to work without your asking him to get you a job; is that what you want us to believe? A. I was down there?

Q. Weren't you? A. Yes, sir.

Q. And you asked Mendy Weiss to get you a job? A. No, sir.

Q. Did he ask these people to put you to work there? A. I don't know, sir.

Q. You told us, didn't you, that he helped you

to get the job, or got the job for you? A. I found out later, sir.

Q. How much later? A. When I went to work there, sir.

Q. You did not know that it was he who got you the job there until after you went to work?

A. Yes, sir.

Q. Do you know a man named Barney Cutler?

A. Yes, sir.

Q. Wasn't it Barney Cutler who introduced you and Mendy Weiss in 1939 in Florida? A. No, sir.

2414

Q. Did you see Barney Cutler there? A. Yes, sir.

Q. Was he there at the time you got the job in this gambling house? A. Yes, sir.

Q. Did you ever have a talk with Barney Cutler and Mendy Weiss about that job? A. No, sir.

Q. Do you say that it was not in the winter of 1939—

Mr. Turkus: Objected to.

2415

The Court: Finish the question.

Mr. Turkus: I am sorry. I thought it was finished.

Mr. Talley: How could it be finished?

Q. Do you say that it was not—I would like the District Attorney to be seated while I am asking the question—do you say it was not in the winter of 1939, in Florida, Miami, that you were first introduced to Mendy Weiss?

2416

Sol Bernstein—For People—Cross

Mr. Turkus: It is objected to as already answered.

Mr. Talley: I have a right to repeat a dozen different times in cross examination.

The Court: You do not have to argue the point.

Mr. Turkus: That is more than I have been taught.

The Court: Objection overruled.

2417

Q. Will you answer, please? A. He did not introduce me, sir.

Q. What? A. He did not introduce me to him, sir.

The Court: Where is the Frolics?

The Witness: It is off the Causeway in Miami.

The Court: Miami City or Miami Beach?

The Witness: Miami City.

2418

Q. Who was running it at the time you worked there? A. Game Boy, Moey Dimples and Tommy Cutty.

The Court: You mean around that circle where Sears, Roebuck is?

The Witness: Yes.

Q. Did you ever hear of a man named Lefty Clark connected with that Frolics? A. Yes, sir.

Q. He was the real owner of it, wasn't he? A. I don't know, sir.

Q. What was his connection with it? A. He was running the game there.

Q. Why didn't you tell the jury when we asked you who was there; why did you omit his name? A. There was a lot of people over there, sir.

Q. But Lefty Clark was running the game, wasn't he? A. The New York game. There was all kind of craps up there.

Q. He was running one game? A. Yes, sir.

Q. And were you working for him? A. No, sir. 2420

Q. Were you working in connection with his game? A. I don't know if it was his game.

Q. Didn't you just tell me it was his game? A. I didn't mean that. I was working for the house over there.

Q. Who else was in that gambling house besides the ones you mentioned? A. There was a lot of peoples over there I don't remember.

Q. You tell us all you do recollect. A. I told you.

Q. We are asking for names. Have you told us all that you recall? A. I just don't recall, sir. 2421

Q. You just don't recall? A. A lot of people.

By the Court:

Q. Were there quite a few tables there? A. Lots of tables there.

Q. Did they have roulette? A. Roulette and western craps. Lefty Clark had a New York game.

2422

Sol Bernstein—For People—Cross

Q. Cage game? A. No, sir, that is New York craps. No, there will be most of them playing western craps, different from a New York game.

Q. Not Cuban? A. I don't know what you mean.

Q. Silver dollars? A. They all played with silver dollars—not the New York game.

Q. Wheels of fortune? A. They called that the table game.

2423

Q. Squared off? A. Yes, sir, there is two games; one you call the line and one the New York game.

Q. How many tables all told? A. There was only one New York crap game and the rest were called field games.

Q. How many tables all told? I want to get some idea of the place. A. About five or six besides the New York game.

Q. And how many table men? A. They had about three on each field game, that is the western game.

Q. How many in all? A. About 20 or 22 men all told.

2424

Q. Twenty or 22 table men? A. Yes, sir.

Q. How many inside guards? A. Oh, there was a lot of spotters there like me.

Q. I mean with guns? A. I don't know, sir.

Q. How many outside guards? A. There was no outside guards. It was wide open.

Q. Anybody could go in? A. Yes, sir, women, children and everything.

Q. How many guards to protect the house bank roll? A. I can't tell you that, sir.

Q. How long were you working there? A. About a week.

Q. The spotter's job is to find out who can be cheated? A. No, sir, to find out like, for instance, they got people working in the game as a shill that I should see they didn't put no money in their pockets. That was my job.

Q. The shill is the phoney player? A. That's right, to try to get customers.

Q. The shill, not being allowed to win, might stick money in his pocket and get away? A. Yes, sir.

Q. The shill is employed by the house? A. Yes, sir.

2426

Q. And he has to lead others into the game like an auction sale? A. Yes, sir, start the game.

Q. Until legitimate players come in to lose their money? A. Yes, sir.

By Mr. Talley:

Q. In other words, he is the come-on, the shill?
A. Yes, sir.

The Court: The decoy duck?

The Witness: I don't understand you,
sir.

2427

Q. Did you know a man named Willie Shapiro? A. Yes, sir.

Q. You knew him before 1936, September, didn't you? A. Yes, sir.

Q. And Irving Shapiro, did you know him?
A. Yes, sir.

Q. And Meyer Shapiro? A. Yes, sir.

Q. They were three brothers, weren't they?
A. Yes, sir.

2428

Sol Bernstein—For People—Cross

Q. And you were friendly with them before 1936, weren't you? A. Yes, sir.

Q. And the three of them were murdered, weren't they? A. Yes, sir.

Q. Did you know Leon Goldstein? A. Yes, sir.

Q. He was known as Ear Bender, wasn't he? A. Yes, sir.

Q. He was a friend of yours, too, wasn't he? A. Yes, sir.

2429

Q. You knew him before 1936? A. Yes, sir.

Q. And you knew a man named Sammy Silverman, didn't you? A. Yes, sir.

Q. And they both were killed, weren't they? A. Yes, sir.

Q. Before 1936? A. I don't know, sir.

Q. You don't know that? A. No, sir.

Q. Weren't they killed before this Rosen killing that you told us about? A. I know the Shapiros were killed. That I know.

Q. What? A. I know the Shapiros were killed in 1936 and the Ear Bender was killed in 1936 and I don't think Sam Silverman was killed before that.

2430

Q. You don't know when he was killed? A. Yes.

Q. Don't you know he was killed before then? A. No, sir.

Q. Did you know a man named Fat Cooperman? A. Yes, sir.

Q. He was a friend of yours? A. Yes, sir.

Q. And he was killed? A. Yes, sir.

Q. Killed in his doorway? A. Yes, sir.

Q. And you drove him there, didn't you? A. Yes, sir.

Q. In other words, you put Fat Cooperman on the spot, didn't you? A. No, sir.

Q. Did you witness Cooperman being killed? A. No, sir.

Q. In his own doorway? A. No, sir.

Q. After you left him there, what did you do with your car? A. I went home, sir.

Q. Did you drive away? A. I didn't know he was killed.

Q. You did not know Fat Cooperman was killed? A. Until I drove home. The next day I found out. I read in the papers.

2432

Q. You knew the next day he was killed, didn't you? A. Yes, sir.

Q. And you knew that he was killed immediately after you deposited him at his doorway? A. I can't tell you that, sir.

Q. You cannot tell me? Bernstein, in April, 1933, April 2, 1933, together with a man named Hirshel Bernstein—you know Hirshel Bernstein, don't you? A. Yes, sir.

Q. And did you know a man named Harold Kepner? A. Yes, sir.

2433

Q. Together with those two men, you broke into a poolroom at 1516 Pitkin Avenue, in Brooklyn, through a skylight, didn't you? A. No, sir.

Q. And you took from a safe there some \$600, didn't you? A. No, sir.

Q. Do you say you had nothing to do with the burglary and theft in that address at that time? A. No, sir.

Q. You mean by that answer, you mean to say that you did not have anything to do with it; is that what you mean? A. No, sir.

2434

Sol Bernstein—For People—Cross

Q. On February 24, 1934, did you, with a man named Joseph Gordon and another man known as Cherry, who was Al Glass, and a Max Rozinsky, didn't you steal from a night watchman named Waiter Ellis, on Adams Street, Brooklyn, a truck containing 1,014 suits of clothing which were the property of the Howard Clothes Company? A. No, sir.

Q. Did you have nothing to do with that theft? A. No, sir.

2435

Q. You knew nothing about it? A. No, sir.

Q. You are sure about that? A. No, sir.

Q. And you are telling the truth? A. Yes, sir.

Q. Al Glass was a partner of yours, wasn't he? A. Yes, sir.

Q. And he was a partner in February, 1934, wasn't he? A. Yes, sir.

Q. Didn't you receive some \$3,000 as your share of the kidnapping of a man named Batisto Salvo in the Bronx? A. No, sir.

Q. You are sure of that now, are you? A. Yes, sir.

2436

Q. Did you have anything to do with the Batisto Salvo kidnapping? A. No, sir.

Q. Did you know anything about it? A. No, sir.

Q. How long did you say you worked in this night club in Florida, Miami is it? A. About a week, sir.

Q. Did you commit any burglaries in Florida? A. No, sir.

Q. Didn't you commit burglaries in Florida from the time you went down there? A. No, sir.

Q. Before 1936, the month of September, and 1930 or 1933 we will make it when you left this leather factory, how many times had you been

in Florida? A. You will have to repeat that question again, sir.

Q. How many times were you in Florida between the years 1933 and 1936? A. Maybe once.

Q. Once? Weren't you there every year? A. I really can't tell you, sir.

Q. Well, how many times? Go back to 1930. How many times were you in Florida between 1930 and 1936? A. Once or twice, sir.

Q. Is that all? A. I think so.

Q. How long did you remain in 1939 at the time you worked for a week in the gambling house? A. How long? About a month, sir.

Q. How long? A. About a month.

Q. You were married at that time, weren't you, 1939? A. Yes, sir.

Q. Was your wife with you that time? A. No, sir.

Q. Did you ever take your wife to Florida on any of these trips you made? A. No, sir.

Q. Do you say you never committed any burglaries or crimes in Florida? A. No, sir.

2438

2439

Mr. Turkes: May the record indicate that the witness means no, that he did not. That has been answered before.

The Court: The answer has to speak for itself.

Q. From 1930 to 1939, to 1940, during that ten years how many times were you in California? A. 1940, you say?

Q. From 1930 to 1940, that ten year period. I want to make the dates easy for you. A. About six or seven times.

2440

Sol Bernstein—For People—Cross

Q. In California, weren't you a thief there?
A. No, sir.

Q. Did you commit any crimes in California on any of the trips you made there? A. No, sir.

Q. Was your wife with you on any of those trips to California? A. No, sir.

Q. How many times did you go to Monticello, in New York State? A. In Monticello, sir?

2441

Q. To Monticello, or Sullivan County, somewhere in that location? A. About eight or ten times, sir.

Q. Did you take your wife with you on any of those trips? A. Just once, sir.

Q. Once? A. To Monticello.

Q. In what year? A. 1937.

Q. You did commit some crimes in Monticello, didn't you? A. No, sir.

Q. Weren't you mixed up with the Yuran murder in Monticello? A. I don't know what you mean, sir.

2442

Q. Do you know what the words "mixed up" mean? A. I told you what I had to do, sir. I helped them bury the body. That's all I know.

Q. You took the police to where the body was buried, didn't you? A. I don't know what you mean by "mixed up".

Q. Do you know what the word "involved" means? A. Yes, sir.

Q. Ah! I will be more careful.

Mr. Turkus: I ask that the "Ah!" be stricken from the record.

The Court: Let it stand.

Q. Were you involved in the Yuran murder?

A. Yes, sir.

Q. And that crime was committed up in Sullivan County, wasn't it? A. Yes, sir.

Q. You were in Los Angeles, weren't you, when you were on the trips to the West? A. What do you mean?

Q. What do I mean? A. Yes, sir.

Q. Let us see how much plainer that could be made. Were you in Los Angeles on any of the trips which you made to California? It cannot be any plainer in language than that, can it?

2444

A. Will you repeat that again, sir?

The Court: Have you ever been to Los Angeles?

The Witness: Plenty of times; about eight to ten times.

Q. What was difficult about understanding in that question? A. I just didn't get it clear, sir.

Q. In 1937 were you in Los Angeles? A. I think so.

Q. Was Hershel Bernstein with you? A. No, sir.

2445

Q. No? A. No, sir.

Q. Sure about that? A. Some year I met Hershel Bernstein over that, that's right, sir. One year, I don't know what year it was.

Q. You say it was 1937 or wasn't 1937? A. I don't remember the year, but I met him out there.

Q. He was a thief, wasn't he? A. I don't know, sir.

2446

Sol Bernstein—For People—Cross

Q. In 1937, in company with Hershel Bernstein, didn't you commit a burglary in Los Angeles? A. No, sir.

Q. Do you remember that Hershel Bernstein was sent away for a year to jail in Los Angeles? A. Yes, sir.

Q. You sent him money there, didn't you? A. Yes, sir.

2447

Q. And you were in Los Angeles at the time the burglary for which Hershel Bernstein was sent to jail was committed, weren't you? A. Yes, sir.

Q. And how long after the commission of that burglary did you get away from Los Angeles? A. What do you mean, get away?

Q. Go away, depart, scam. You know what I mean by get away.

Mr. Turkus: I object to the form of the question.

Mr. Talley: I am trying to speak in words of one syllable.

2448

Mr. Turkus: The words are not synonymous.

The Court: How long did you remain in Los Angeles after Hershel was arrested for burglary?

The Witness: About a month, sir.

Q. Did you remain there for his trial? A. No, sir.

Q. Were you away before he was put on trial? A. Yes, sir.

Q. Was he put in jail after his arrest for the burglary? A. Yes, sir.

Sol Bernstein—For People—Cross

2449-

Q. Was he kept in jail? A. Yes, sir.

Q. Was he in jail while you still remained in Los Angeles? A. Yes, sir.

The Court: Is he related to you?

The Witness: No, sir.

Q. You hired the lawyer for Hershel Bernstein in 1937, didn't you? A. No, sir.

Q. Didn't you commit burglary, Bernstein, in a store known as Shimmy's Clothing Store on Pitkin Avenue, Brooklyn? A. No, sir.

2450

Q. Didn't you commit a burglary in the Finance Company's premises on Pitkin Avenue and Douglas Street? A. No, sir.

Q. Didn't you commit a burglary in Nokel's Cigar Store here in the Borough of Brooklyn? A. No, sir.

Q. Didn't you commit a burglary in the Parkway Restaurant? A. No, sir.

Q. On Pitkin Avenue? A. No, sir.

Q. Did you not commit a burglary in Dubrow's Restaurant? A. No, sir.

2451

Q. Did you not commit a burglary or theft in a bus terminal in Queens County? A. No, sir.

Q. In 1934? A. No, sir.

Q. Did you not commit a burglary in a hotel up in the mountains, around Monticello, in Sullivan County? A. No, sir.

Q. In the shylocking business you had to borrow a lot of money to finance yourself, didn't you? A. Borrow? I gambled, sir, and I won some money.

Q. To get money to loan to other people? A. What?

2452

Sol Bernstein--For People--Cross

Q. You had to get money to loan to other people, didn't you? A. What do you mean get? I had it—

Q. Where did you get it? A. I gambled.

Q. You did not borrow any money from anybody in order to carry on the shylock business, did you? A. Sometimes I was short, I took it from different shylocks.

2453

Q. Where did you get it from when you were short? A. Louis Capone, Harry Strauss and Mike Sycoff.

Q. Not Mendy Weiss? You forgot him, didn't you? A. No, sir.

Q. You did not forget him? A. No, sir.

Q. You did not get any money from him, did you? A. No, sir.

Q. Did you ever borrow any money from Food Dealers? A. Yes, sir.

Q. That was to carry on your shylock business, wasn't it? A. That was when I got stuck.

2454

Q. That was to carry on your shylock business, wasn't it not? A. Whenever I got stuck and I could not pay the shylocks, I had that ace in the hole.

Q. Why didn't you mention that when I was asking ~~you~~ the people from whom you had borrowed money? A. I borrowed from a lot of banks.

Q. You borrowed as much as \$50,000., didn't you, from the Food Dealers? A. I don't keep no figures.

Q. You don't keep no figures? A. No, sir.

Q. Did you keep any figures of the moneys that you loaned other people? A. Yes, sir.

Q. Then you did keep some figures, didn't you? A. Not in the banks.

Q. Did you keep any record of the moneys that people borrowed from you that they did not pay back? A. Did I keep any records? Yes, sir.

Q. You kept records on cards, didn't you? A. What do you mean? I don't understand you, sir.

Q. You don't understand what the word "cards" is? A. I know what the cards mean.

Q. You know what the word "record" is? A. Yes, sir.

Q. My question is, did you not keep records of these shylock transactions on cards, memorandum cards, not playing cards? A. On cards?

Q. C-a-r-d-s? A. On the customers, you mean, sir?

Q. Did you not keep records of your transactions in the shylocking business on cards, memorandum cards? A. Yes, sir.

Q. So your statement that you kept no records was not true, was it? You did keep records?

Mr. Turkus: Objected to. He made it clear what records he referred to.

Mr. Talley: I am cross-examining, your Honor.

Mr. Turkus: That does not permit an improper statement of fact to be offered to the witness.

Mr. Talley: He said, "I keep no records." That is what he said. I have now brought out that he has kept records.

2458

Sol Bernstein—For People—Cross

Mr. Turkus: I have an objection.

The Court: I think his previous answer related to moneys which he borrowed for the purpose of loan. I thought I understood you to ask him if he had borrowed \$50,000. from certain banks.

Mr. Talley: Relating to his records of the shylocking business.

The Court: Do you mean you did not keep records of what you loaned?

2459

The Witness: I did keep records of the loaned shylock money, yes, but I did not keep records in the banks.

The Court: You did not keep any books?

The Witness: No, sir.

Q. You borrowed as much as \$50,000., didn't you, from the Food Dealers?

Mr. Turkus: Objected to, unless he fixes the period of time in which it was borrowed.

2460

The Court: Overruled. All told.

Q. We are waiting for your answer. A. I did not keep no figures.

Q. Don't you know without the figures? A. It might have been, sir.

Q. Was it? A. It might have been close to that, or maybe more.

Q. Is that your best answer, it might have been? A. It might have been, maybe more. I can't tell you that, sir.

Q. So you had quite an extensive business as

a shylock, didn't you? A. No, sir, gambling, sir.

Q. You borrowed the money from the Food Dealers Association, if it was that, or bank, for your shylocking, not your gambling business, isn't that so?

Mr. Turkus: Objected to. That was not the testimony. It was to re-pay the shylocks whom he enumerated. He said it was an ace in the hole.

2462

Mr. Talley: I object to the statement of the District Attorney.

Mr. Turkus: I have an objection.

The Court: Overruled.

(Question read by reporter.)

A. Yes, sir.

By the Court:

Q. What did you do, borrow that on demand notes? A. I had some man who made good for me all the time.

2463

Q. Was it on demand notes or I.O.U.'s? A. I don't know, because he had a big property on Pitkin Avenue and he was good for a lot of money there.

Q. Was it secured loans? A. I suppose so.

Q. You must have paid a pretty good rate for it? A. Thousand dollar loans, five hundred dollar loans, something like that.

Q. How much did you pay? A. I think it was \$72.50 for \$1,000.

2464

Sol Bernstein—For People—Cross

Mr. Turkus: May I have the first part of the answer, from whom he borrowed this money?

By Mr. Talley:

Q. Who was the man that had property on Pitkin Avenue? A. Charles Meyers of 171 Herzl Street, and I will give you some more if you want to know.

2465

Q. And he used to endorse your notes, didn't he? Meyers endorsed your notes? A. What did you say?

Q. Meyers was one of those who would endorse your notes? A. Yes.

Q. Sign his name on the back? A. And if you want to also know who gave me loans of this bank, I will tell you, too.

Q. I will ask you at the proper time, if you will just answer the questions you are asked.

2466

Mr. Rosenthal: May I move to strike out the voluntary answer of the witness? The voluntary statement of the witness I ask to strike out.

The Court: Strike it out.

Mr. Turkus: I ask it stand.

Mr. Rosenthal: I ask your Honor, in view of the fact that we had a morning recess and the witness has forgotten, that your Honor admonish this witness to answer questions and not volunteer.

The Court: So admonished.

Mr. Talley: Will you tell the witness that? I am sure he will say he did not

understand what you meant by the words, "So admonished".

The Court: Yes. You put your mind on the questions; then you will understand them better and simply answer them. There are enough lawyers in court to take care of everything.

The Witness: Yes, sir.

Q. There came a time when Charley Meyers refused to endorse any more of your notes, didn't there? A. Yes, sir.

2468

Q. And then you struck his daughter, didn't you? A. No, sir.

Q. Never touched her? A. No, sir.

Q. Why, didn't she have you arrested and weren't you arraigned in court?

Mr. Turkus: Objected to.

Q. On her charge of assault?

Mr. Turkus: Objected to. I thought your Honor had admonished Judge Talley that an arrest is not proper evidence.

2469

Mr. Talley: I am asking about an act here.

The Court: Sustained.

Mr. Talley: I take an exception.

Q. The fact is that you got Charlie Meyers to pull his daughter off the charge she made against you, isn't that right?

Mr. Turkus: Object to the question.

The Court: Sustained.

Mr. Rosenthal: I take an exception.

2470

Sol Bernstein—For People—Cross

Q. And didn't you threaten Meyers and threaten his daughter that if they testified in court against you that harm would come to them? A. No, sir.

Q. Why, didn't you pay \$200 to the Meyers girl or to her father to have them pull off the charge against you of assault? A. No, sir.

Q. In 1934 you stole \$7,000 worth of merchandise from Abe Stark's store, didn't you? A. No, sir.

2471

Q. Did you know anything about that burglary? A. No, sir.

Q. Or theft? A. No, sir.

Q. Never heard of a store kept by Abe Stark or known as Abe Stark's store? A. Yes, sir.

Q. You mean by that you never heard of it, is that what you mean?

Mr. Turkus: Object to that. That is not the meaning at all.

Q. Then you did hear of Abe Stark's store, did you? A. Yes, sir.

2472

Q. Where was it? A. On Pitkin Avenue.

Q. Was it in 1934 broken into? A. I don't know, sir.

Q. Was there a burglary there? A. I don't know, sir.

Q. Did you ever hear that there was a burglary in Abe Stark's store in which he claimed to have lost \$7,000 worth of merchandise? A. No, sir.

Q. Never heard of that? A. No, sir.

Q. How well did you know Abe Stark? A. I knew him like this, buy clothes there.

Sol Bernstein—For People—Cross

2473

Q. You used to buy clothes there? A. Yes, sir.

Q. Did you buy them in 1934? A. I am buying them for a good many years there. I don't know how long, sir.

Q. Well, can you tell us whether 1934 was one of the years you were buying them?

Mr. Turkus: Objected to.

The Court: Sustained as irrelevant.

2474

Q. Do you mean to say that Abe Stark never told you that he had been robbed of \$7,000 worth of merchandise?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Talley: Exception.

The Court: That is the leading clothing store in Brownsville, is it not?

The Witness: Yes, sir.

The Court: Has been for years?

The Witness: Yes, sir.

2475

Q. How many automobiles do you say that you have stolen? A. Close to 75 cars.

Q. 75 cars? A. Yes, sir.

Q. Is that the truth now?

Mr. Turkus: Object to the form of the question.

The Court: Overruled.

Mr. Turkus: The word "now" is what I objected to.

2476

Sol Bernstein—For People—Cross

Q. Is it the truth you are telling us here about those cars? A. Yes, sir.

Q. Was not more than 75 or a hundred, was it? A. I don't know, sir. Close to 75.

Q. And do you say that you never used what you described as a hot-box in any of your thefts of these 75 cars? A. No, sir, except what Muggsy used.

Q. Excepting what? A. No, sir, except that Muggsy used in this here case.

2477

Q. This one case? A. Yes, sir.

Q. Is the only time that a hot-box, which is an appliance to start a car, was used, is that right? A. Yes, sir.

Q. What was your method of starting the cars that you stole? A. Stole them out of garages.

Q. You never stole a car from the sidewalk until you stole this car that you used in the Rosen case, is that right? A. Yes, sir.

2478

Q. And how was it that you, with a record as an automobile thief, having stolen 75, why did you have to get Muggsy Cohen or anybody else to help you steal a car? A. Because I didn't know there was going to be a murder, sir.

Q. When did you learn that there was going to be a murder? A. When I seen Louis Capone, four o'clock, on Sackman and Livonia.

Q. What time was it t'at you say you saw Louis Capone? A. About four o'clock.

Q. And that he told you? A. Saturday.

Q. Four o'clock in the afternoon or morning? A. In the afternoon, when he showed me the route, he came to the store.

Sol Bernstein—For People—Cross

2479

Q. He pointed out the store and said, "Somebody is going to be killed there"? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And you knew that you were to drive the car for the men that were doing the killing, didn't you? A. Yes, sir.

Q. When he told you that somebody was going to be killed in that candy store, you did not tell the police? A. I was not a stool pigeon then.

Q. Did you?

2480

Mr. Rosenthal: I ask that the answer be stricken as not responsive.

Mr. Turkus: I ask that it stand. It is responsive to Judge Talley's question.

Mr. Rosenthal: The answer to that is yes or no.

The Court: Strike it out. Say yes or no. Did you tell the police?

The Witness: No.

Q. You did nothing to prevent the killing in this candy store that you were told about, did you? A. No, sir.

2481

Q. In the trial of Gangi Cohen in Monticello, in June term of the County Court, Sullivan County, 1940, you were sworn to tell the truth, weren't you? A. Yes, sir.

Q. And were you asked this question and did you make this reply (page 70 of the minutes of that trial):

"Q. Did you ever steal a car? A. Yes.

Q. How many times did you steal cars? A. Once or twice."

2482

Sol Bernstein—For People—Cross

The Witness: I mean in two cases, sir.

Q. You mean in two cases? A. Yes, sir.

Mr. Talley: I move to strike out the answer as not responsive. The question was, was he asked that question and did he make that reply.

The Court: Strike out the answer.

The Witness: If it is in the book, I said it.

2483

Q. It is in the book. A. I said it.

Q. That was not true, was it? A. No, sir.

Q. Instead of stealing a car once or twice before June, 1940, you had stolen between 75 and a hundred, hadn't you? A. Before when, sir?

Q. June, 1940, when you testified in Monticello? A. Yes.

Q. Have not stolen any since then, have you? A. Since when?

Q. Since June, 1940? June of last year? A. I was arrested, sir.

2484

Q. I say you have not stolen any since that time, have you? A. I was under police protection, sir.

Q. All right. When did you get under police protection? A. Some time in April, 1940.

Q. April, 1940? A. Yes, sir.

Q. And you went under police protection because you gave yourself up, is that right? A. Yes, sir.

Q. You were not arrested; you walked into Captain McDonough's or Detective McDonough's office? A. Who?

Q. You walked into Detective McDonough and gave yourself up, didn't you? A. No, sir.

Q. How did you give yourself up? A. I gave myself up to Detective John McDonough and he brought me to the District Attorney's office where District Attorney O'Dwyer and Captain Bals were.

Q. Didn't you do that, give yourself up to Detective McDonough? A. There he is right there (indicating).

Q. Did you give yourself up to Detective McDonough? A. Yes, sir.

Q. And he has been with you ever since, hasn't he? A. What do you mean he is with me ever since?

Q. Had you in custody ever since? A. No, sir.

Q. Is he down in the Half Moon Hotel with you? A. No, sir.

Q. By the way, did you ever have any talk with Mrs. Rosen in the Half Moon Hotel? A. I don't know if she was there, sir.

Q. Did you have any talk with her? A. No, sir.

Q. Did you see her there? A. No, sir.

Q. Did you have any talk with Abe Reles in the Half Moon Hotel? A. Yes, sir.

Q. Many times? A. Yes, sir, about baseball, football, radio.

Q. Nothing about crime in Brooklyn? A. We are not allowed to talk about any case, sir, because the cops are always there.

Q. The cops are always there? A. Yes, sir.

Q. So all you talked about with Abe Reles was baseball and football? A. Yes, sir.

2488

Sol Bernstein—For People—Cross

Q. And horse racing? A. Very seldom I talked with that mouse.

Q. Referring to Abe Reles as a mouse? A. Yes, sir.

Q. Didn't you tell us how many times you talked with him? A. I very seldom talked up there, sir.

Q. How many times did you tell us you talked with him? A. I said I very seldom talked with him, sir.

2489

Q. How many times I asked you?

Mr. Turkus: I object to it. It is answered three times in a row "very seldom" and the reason must be quite obvious even to Judge Talley.

Mr. Rosenthal: I object to any statement.

Mr. Turkus: Why didn't you make a statement and sit down?

Mr. Talley: What difference does it make what statement he makes?

2490

By the Court:

Q. Do you remember how many times you talked to Reles in the Half Moon? Just yes or no. A. About a year, sir.

Q. How many times, ten, twelve, fifteen, twenty? A. About 366 or 367, something like that.

Q. Several hundred times?

Mr. Talley: 366 or 370 times you talked with Abe Reles.

Sol Bernstein—For People—Cross

2491

Q. It is a daily matter, isn't it? A. No, sir, it isn't; I don't go around talking; I only look.

Q. Have you ever talked with him about the case? A. No, sir; we are not allowed to talk about any case, sir.

By Mr. Talley:

Q. Did you live in the same room with Abe Reles? A. What do you mean, I lived in the same room, sir?

2492

Q. Oh, you know what "live in the same room" means. Answer the question. Did you live in the same room with Abe Reles? A. I saw him there but I slept in a different room with two detectives guarding me.

Q. In the Half Moon Hotel did you occupy the same room as Reles? A. Yes, sir.

The Court: To sleep?

The Witness: I do not sleep with him.

The Court: Have you ever slept in the same room?

The Witness: No, sir.

2493

Q. Since you have been living in the Half Moon Hotel, you received visits from your wife, didn't you? A. Yes, once a week and there are always detectives with us.

Q. You never were left alone with your wife in the Half Moon Hotel? A. Yes, sir.

Q. Are you sure of that? A. I am positive.

Q. And what time were the visits that your wife was allowed to make to you? A. She comes from two to six, sir, just Sundays because she works, sir.

2494

Sol Bernstein—For People—Cross

Q. And at all times when your wife was with you in the room, there was a detective in the room with you; is that right? A. Yes, sir.

Q. When was the last time she called to see you? A. Sunday, sir.

Q. Last Sunday? A. This here Sunday coming.

Q. What detective was in the room while she was visiting you? A. Brennan, sir.

Q. Has he been there before? A. What do you mean? Yes, sir.

2495

Q. Brennan? A. Yes, sir.

Q. Has he been there at frequent times in the 365 days that you were talking to Reles in the Hotel? A. Yes, sir.

Q. He has been almost constantly there, hasn't he? A. There is a lot of detectives there, sir.

Q. He is Brennan? A. I don't understand you, sir.

Q. Was District Attorney O'Dwyer in the court room in Monticello when you were testifying? A. I don't know, sir. I didn't take notice.

2496

Q. Will you say that he was or was not? A. I can't tell you that, sir.

Q. Can you remember? Did you see District Attorney O'Dwyer in Monticello while that trial was on? A. No, sir.

Q. You did not talk with Judge O'Dwyer in Monticello at any time when you were there, did you? A. At the trial, sir?

Q. At the trial or at the time of the trial, before court opened, after it closed, during recess, any time during that period? A. Yes, sir, did not see him.

Q. You did talk with him? A. No, sir. I didn't.

Q. You mean by "Yes, sir" no, sir?

Mr. Turkus: Objected to. He said "I did not see him." I have an objection to the statement made by Judge Talley that "Yes, sir" means "No, sir."

The Court: I think Judge Talley did not hear the latter part of the answer. He said "Yes, sir, I did not see him."

Q. Did you see District Attorney O'Dwyer while you were in Monticello in connection with the trial of the Gangi Cohen case? A. No, sir.

2498

Q. Was District Attorney O'Dwyer before the Grand Jury in this case, the Rosen case, when you testified? A. No, sir.

Q. Who examined you there, Mr. Turkus? A. In the Grand Jury room?

Q. Yes. A. Mr. Heffernan and Mr. Hanley, sir.

Q. And did you tell the truth before the Grand Jury of this county? A. Yes, everything.

Q. All of it? A. All of it, yes, sir.

Q. Did you tell the Grand Jury that you had stolen 75 to a hundred automobiles? A. No, sir.

2499

Mr. Turkus: He first has to be asked it. I object to it.

Mr. Talley: I object to the statement made by the District Attorney. If he wants to be examined on these things, I will take great pleasure in putting some questions to him if he takes the stand.

The Court: Overruled.

Mr. Talley: Exception.

Mr. Turkus: I do not know who is overruled. Don't be so quick with your exception. I take objection to the form

2500

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of the question because the Grand Jury proceeding is conducted with Q. and A. and the witness in order to answer must be questioned.

The Court: The questions that are answered are the questions that are asked. I take it when he said he told everything, he means everything in response to the questions that were asked.

2501

Q. Bernstein, why did you testify falsely in this murder case in Monticello about your stealing 75 or a hundred automobiles?

Mr. Rosenthal: I object to the form of the question.

The Court: Overruled.

Mr. Rosenthal: I object to the question itself. Exception.

A. Because the whole mob was not picked up yet. I didn't want to give no information.

2502

Q. Therefore you testified under oath falsely, is that right? A. Yes, sir, not to give any information.

Q. Did you tell the District Attorney that you were going to testify falsely because all the mob were not picked up? A. What did you say, sir?

(Pending question read by the reporter.)

A. I was told not to talk about any other case.

Q. Who told you that? A. Somebody in the District Attorney's office. I don't recall who. I didn't tell all of the truth up there, sir.

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2503

Q. What? A. I didn't tell all of the truth up there, sir, but just the truth about Gangi, sir, mostly.

The Court: When you say some one in the District Attorney's office, that case up there was not tried by District Attorney O'Dwyer's office; it was tried by the local District Attorney?

The Witness: Yes, sir.

The Court: Do you mean somebody connected with the local District Attorney's office or somebody from District Attorney O'Dwyer's office?

2504

The Witness: I don't know who they were, sir.

The Court: Was it somebody connected with that trial?

The Witness: I really can't tell you, sir. I don't know who is who.

Mr. Rosenthal: I cannot hear the answer.

The Court: He said he does not know who was who.

2505

You understand the District Attorney of Kings County did not try that case?

The Witness: No, sir.

The Court: That was tried by the local District Attorney at Monticello?

The Witness: Yes, sir.

Q. It was not the local District Attorney or any Assistant District Attorney in Sullivan County that told you not to tell all the truth, was it?

Mr. Turkus: I object to that. That is

2506

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not the testimony. That is a scurrilous and scandalous attack on a public official without warrant or justification.

The Court: Yes, that is not a fair inference. He said that he was told not to talk about any other case. It is apparent that this was his interpretation of that instruction from the person whom he cannot identify.

2507

Q. What were you told about not telling all of the facts in your testimony in Monticello?

Mr. Turkus: Objected to. There is no such testimony in the record. It carries with it an implication unfounded in any of the testimony.

The Court: He has already answered it. Sustained.

Mr. Talley: Exception.

2508

Q. Was the man who spoke to you about your testimony part of the District Attorney's office in Brooklyn? A. I didn't know who was who, sir.

Q. You don't know who was who? A. No, sir.

Q. Would you take a statement from anybody without knowing who he was?

Mr. Turkus: I object to that.

The Court: Sustained as argumentative.

Mr. Talley: Exception. It is not argumentative. I respectfully except to your Honor's ruling.

Q. Do you know whether the man was part of the District Attorney's office in Sullivan County that told you that? A. Can't tell you that, sir. I don't know.

Q. But following the direction of whoever it was that told you, whom you now don't know, you did conceal some of the truth in the trial in Monticello, didn't you?

Mr. Turkus: I object to it, please the Court: I object to the preamble. It is not consistent with the testimony already given.

2510

The Court: I am just trying to think. It is a close question. The question as to how many automobiles were stolen is not connected with the prosecution of any murder case. The only reason it may be gone into is on the question if impeaching the credibility of the witness by showing his criminal tendencies. He has abundantly admitted plenty of that.

Mr. Talley: I don't think we have scratched the surface of it, Judge.

2511

Mr. Turkus: I ask—

Mr. Talley: I intend to pursue it as far as I can.

The Court: The Court is going to give you liberal latitude. I think you better re-frame that question because it is a little puzzling in its form.

Q. You swore falsely in your trial in Monticello, didn't you?

2512

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Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Talley: I have got to pick up. In view of the objection that has been made, I have got to ask these preliminary questions. I except to your Honor's ruling.

2513

Q. This testimony that you gave that I have read to you, in which you were asked how many times did you steal cars, and you said once or twice, was false, wasn't it?

Mr. Turkus: Objected to as already answered.

The Court: Sustained as repetitious.

Mr. Talley: Exception. I insist that on cross examination I have a right to repeat.

The Court: I have here on my notes that he admits the theft of about seventy-five cars.

2514

Mr. Talley: I am proceeding on another line.

The Court: That stands.

Mr. Talley: I am proceeding on another line.

The Court: Go ahead, then, Judge.

Q. In what other respects did you testify falsely in this trial in Monticello? A. The lawyer started asking me about different cases. I got confused in the blizzard. I didn't know what to say. I said that, knowing I was doing wrong—that lawyer over there (indicating).

Q. You knew you were doing wrong when you

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2515

gave this testimony? A. Because he wanted to get information out of me.

Q. Did you? A. About different cases.

Mr. Rosenthal: I ask that the answer be stricken as voluntary and not an answer to the question.

Mr. Turkus: I ask that it stand—responsive and it explains a whole line of questioning.

The Court: Let it stand.

2516

Mr. Rosenthal: Exception.

Q. In what other matters did you testify falsely in this trial in Monticello?

Mr. Turkus: Objected to as already answered.

Mr. Talley: I have not the answer.

Mr. Turkus: Yes, you have.

Mr. Talley: No, I have not.

Mr. Turkus: He has just given an answer which Mr. Rosenthal wanted stricken out and the court let it stand. That is the answer.

2517

The Court: I don't think it is an answer.

The Court: Do you recall in any other respects that you gave false testimony in Monticello? Search your memory and see if you can remember any points.

The Witness: If it is in the book, I said it, but I can explain about that.

Mr. Cuff: I move to strike it out.

The Court: Do you at this time re-

2518

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member in what respects you gave otherwise false testimony?

The Witness: No, sir.

Mr. Rosenthal: I cannot hear.

The Court: The court tried at the outset of this trial to get amplifiers but the cost is prohibitive and there is no fund out of which to make the purchase, so we have to accept the acoustic properties of this room for what they are.

2519

Mr. Rosenthal: I am not complaining about that. All I am complaining of is that I did not hear the question. May I have the privilege of having it repeated, plus the answer?

The Court: Much of the difficulty in hearing in this room is due to street noise and also at certain times there is an undercurrent of room noise that has to be overcome.

2520

Q. When you say you were in a blizzard, do you mean you were all befogged? You do not mean there was actually a blizzard in Sullivan County in June, 1940? A. I was in a blizzard.

By the Court:

Q. Explain what you mean by that. A. I was in a fog.

Q. You mean mental? A. I don't know what he was saying.

Q. Do you mean you were confused? A. Yes, sir, I was confused.

Q. You do not mean snow was falling? A. No, sir.

By Mr. Talley:

Q. And were you confused on the question of whether you had been the thief in the case of seventy-five or a hundred automobiles and one or two? Do you mean to say you answered that way because you were confused?

Mr. Turkus: I object to it.

The Court: Yes, he has testified he had a different reason for answering that question untruthfully. He has told us what that reason is. Sustained.

2522

Mr. Talley: Exception.

Q. Most of these seventy-five or hundred cars that you stole were before 1936, weren't they?

A. No, sir.

Q. Were most of them after September 13, 1936? A. Yes, sir.

Q. How many had you stolen before September 13, 1936? A. About ten or twelve, sir.

Q. Then you did not extensively go into the automobile stealing business until after the Rosen killing, is that right? A. Yes, I got graduated, sir.

2523

Mr. Cuff: I move to strike it out.

Mr. Turkus: I ask that it stand as responsive.

Mr. Rosenthal: I ask that it be stricken.

The Court: Strike it out.

Q. You never were once put in jail for stealing these seventy-five or a hundred cars, were you?

A. I got arrested once for a stolen car.

2524

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Q. That is the time you pleaded guilty, wasn't it? A. Yes, sir.

Q. And that is the only time out of seventy-five or a hundred times you stole cars that you were arrested? A. Yes, sir.

Q. And on that occasion when you were arrested for stealing the car, there was a gun found in the car, wasn't there? A. No, sir.

Q. You don't mean that, do you? A. No, sir—yes, sir.

2525

Q. Do you mean that you heard no talk about a gun being found in that car when you pleaded guilty to having stolen the car?

Mr. Turkus: Objected to. That is not the question—

The Court: Sustained.

Mr. Turkus: That he answered no.

Mr. Talley: Exception.

Q. When the car was picked up, don't you know that a gun was found in it?

2526

Mr. Turkus: Objected to as already answered in the negative.

The Court: Sustained.

Mr. Talley: Exception.

Q. Were any of these cars that you stole used in a murder case other than this Rosen case?

A. I don't know, sir.

Q. You don't know? A. No, sir.

Q. At the time you were arrested for the crime for which you later pleaded guilty, that is, stealing an automobile, when the car was

picked up there was powder inside the car and cartridges there, were there not?

Mr. Turkus: I object to it as already answered.

Mr. Talley: He has not answered that.

Mr. Turkus: Then it would be impossible to answer because if he was arrested he could not see what went on in the car.

The Court: Did you see any?

The Witness: No, sir.

The Court: Did you know of any?

The Witness: No, sir.

Q. Did you hear any officers testify on your trial or at your plea of guilty what the condition of the car was when it was picked up?

Mr. Turkus: I object to it. That is elementary.

The Court: Sustained.

Mr. Talley: Exception.

Q. So your testimony now is—and you are not in any blizzard now, are you?

Mr. Turkus: Just a minute.

Q. Your testimony now is that in respect to the car that you pleaded guilty to stealing, you never heard until now, when I spoke that a gun was found in that car, that there was evidence of gunpowder inside the car, and that there were some bullets in the same car? Is that your answer?

2530

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Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Turkus: That is worse than elementary.

Mr. Cuff: That is highly reprehensible.

Mr. Turkus: It is a wonder he would not know it. He was a Judge. You should know it. You were an assistant.

Mr. Talley: I am trying to speak in words of one syllable so that the witness will understand it.

2531

Q. Did you know a man named Red Rabiner?

A. Yes, sir.

Q. Was he an automobile thief? A. I don't know, sir.

Q. What was he? A. I don't know, sir.

Q. Was he a friend of yours? A. Yes, sir.

Q. Did he steal the car that was used in the killing of Thomas Hitter, the fireman, here in the Borough of Brooklyn?

2532

Mr. Turkus: I object to dragging in any other case in which this witness has no part.

Mr. Cuff: I object to that statement.

Mr. Turkus: He asked if a man named Red Rabiner stole the car used in the Hitter murder.

The Court: Sustained.

Mr. Talley: Exception.

Q. Did you have anything to do with the theft of that car? A. No, sir. Counsellor Barshay can tell you about that case. He questioned me two days.

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2533

Mr. Cuff: I move to strike the answer out.

Q. I am asking you. A. He questioned me when he was District Attorney.

Mr. Barsbay: May I move to strike out any information that that man may think I have, has nothing to do with this case.

The Court: Strike it out.

2534

Mr. Turkus: Consented to.

Q. Did you send any money to Rabiner while he was in jail on that charge?

Mr. Turkus: Objected to. It is incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Talley: Exception.

Q. Did you have anything to do with the killing of Fireman Hitter?

2535

Mr. Turkus: Objected to as already answered in the negative.

The Court: Overruled. Yes or no.

A. No, sir.

Q. That is not one of the murders that you were identified with here in the Borough of Brooklyn, was it?

Mr. Turkus: I object to it. That carries with it an implication.

Mr. Talley: Why, he said he is a mur-

2536

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derer. He testified he was in the murder business.

Mr. Turkus: Will your Honor tell Judge Talley to reserve whatever summation he has for the proper time.

Mr. Talley: This man has said that he was a murderer. He said it from that witness chair.

2537

Mr. Turkus: He said your client was, too. That is something you are not talking about.

Mr. Cuff: If your Honor pleases, I think the statement of Mr. Turkus is improper and should be stricken from the record, and your Honor should reprimand him for making it.

2538

The Court: He has said that he was a participant in the Rosen murder. He has said that he assisted in the illegal disposition of a body alleged to have been the subject of a murder which he himself was not a participant in, in Sullivan County. That is as far as the evidence on that point goes. The objection is sustained.

Q. Bernstein, aren't you the man that killed Fireman Hitter? A. No, sir.

Q. Do you remember when Fireman Hitter was killed?

Mr. Turkus: Objected to. It is incompetent, irrelevant, immaterial, not the subject matter of this inquiry.

The Court: Overruled. Within reasonable limitations inquiry may be made

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directly along that line, although the issue itself may not be tried. This comes under the specific impeachment rule.

(Question read by reporter.)

A. I was in the bank, sir. I was told about that—Modern Industrial Bank.

Mr. Rosenthal: I do not hear.

The Witness: I was in the bank, the Modern Industrial Bank. I was told about it by the president. The special officer and the Litvins were there. Counsellor Barshay questioned me on that case.

2540

Q. When you were told about the killing of Fireman Hitter, you were in a bank? A. Yes, sir, to get a \$5,000 loan.

Q. For your shylocking business? A. To pay different shylocks. No, I made good for Joe Litvin, the Litvin brothers.

Q. Were you visiting or being attended by some doctor for some trouble with your leg on the day that Fireman Hitter was killed? A. No, sir. I don't know nothing about that case, sir.

2541

Q. What? A. I don't know nothing about that case, sir.

Q. Do you know whether or not you ever were attended by a physician for something that was wrong with your leg?

Mr. Turkus: Objected to as already answered in the negative.

The Court: Overruled. Do you remember that?

2542

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The Witness: What is that again, sir?
(Question read by reporter.)

Mr. Turkus: He was ever attended by a physician, that is incompetent, irrelevant—

The Court: He means by that—

Mr. Turkus: He stated he was in a bank, making a \$5,000 loan.

The Court: Around that time were you being attended for your leg?

2543

The Witness: No, sir.

Q. Do you know a doctor named Wiener? A. Yes, sir.

Q. Were you being attended by Doctor Wiener? A. About what, sir?

Q. About something that was wrong with one of your legs? A. No, sir.

Q. He never attended you for that? A. No, sir.

Q. Was there a time when you were lame from some affliction in one of your legs, something the matter with one of your legs?

2544

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial, having nothing to do with this homicide that we are trying.

The Court: Overruled.

A. What did you say?

Q. Why didn't you listen?

Mr. Turkus: I object to this gratuitous statement made by Mr. Talley.

Mr. Talley: Perfectly natural question.

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2545

Mr. Turkus: Perfectly natural for any witness to lose the question.

The Court: It is quite a common ailment. Even counsel may ask a question and in the ensuing discussion lose track of the question.

Mr. Talley: There has not been any discussion on this question, none whatever.

(Question read by reporter.)

2546

A. No, sir.

Q. Do you remember when the Fireman Hitter murder occurred here?

Mr. Turkus: Objected to. He has gone over that.

Mr. Talley: Going over it again.

The Court: Overruled.

Q. I was in the Modern Industrial Bank, sir.

Q. When? A. The time the president told all of us.

Q. When was the time of the Hitter, Fireman Hitter, killing? A. You can check up on that loan, that \$5,000 loan. Mr. Barshay checked up on that, sir.

2547

Mr. Talley: I move to strike that out.

Mr. Barshay: Lest anybody misunderstand, I was in the D. A.'s office.

The Court: I was just about to clear that up.

Mr. Barshay: I was investigating that case.

2548

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The Court: You had charge of the initial investigation.

Mr. Barshay: Positively. I investigated this man, but that has nothing to do with this case, and I object to my name being brought in.

The Court: You can interrupt, Judge Talley, if you do not want this question asked—

2549

Mr. Barshay: I am speaking for myself.

Mr. Turkus: There is something going on at the foot of the jury box by way of stage whispers.

Mr. Rosenthal: There are stage whispers in front of the jury box continuously.

The Court: Stage whispers cannot be heard in this room. When the Judge talks in an audible tone it cannot be heard. Just listen to this, please.

By the Court:

2550

Q. Was the Modern Industrial Bank the bank where Fireman Hitter had cashed the payroll checks? A. Yes, sir, the president said so.

Q. Just before the murder? A. Yes, sir, the president said so, and there was a special cop over there and I think the lawyer was there and the five Litvin brothers and Charles Meyer was there.

Q. And that is the way you got the news. When he was carrying the money back from the bank to the firehouse he was shot and killed? A. Yes, sir, and he got the records, and everything.

Q. Your alibi is in the fact that you were in the bank when the news came after? A. Yes, sir.

Q. You were negotiating a \$5,000 loan? A. Yes, sir, it was a \$5,000 loan, or a renewal for that \$5,000.

Mr. Barshay: Now, your Honor, may I ask as a favor to me, please, so that nobody will misunderstand, let the record show that I have nothing to do with this part of this examination and I have a general objection to it and I don't want to have my name drawn into it so that anybody may misunderstand.

2552

The Court: You were the public official who investigated it.

Mr. Barshay: That is right, sir.

The Court: But at that time the case did not break. It was later on investigated. The investigation was reopened upon other evidence being obtained.

Mr. Barshay: I did that, too. I reopened that myself.

2553

The Court: And you were not in the office when the case was tried?

Mr. Barshay: Positively, sir.

The Court: And this man was not the defendant in that case.

Mr. Barshay: That is right, sir.

By Mr. Talley:

Q. Did you know a man named Sandy Reles?

A. No, sir.

Q. Never heard of him? A. No, sir.

2554

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Q. Didn't you know that a man named Sandy Reles— A. Excuse me, sir.

Q. What? A. I heard of Reles.

Q. You talked 365 days or 366 days to Abe Reles, didn't you? A. That name I will never forget, sir, never.

Mr. Talley: I move to strike that out.

The Witness: When you say Reles, I will never forget that name, sir.

2555

Q. Didn't you just tell us that you have spoken as many as 365 times to a man named Abe Reles? A. Yes, sir.

Q. And now you tell us that you heard that name, didn't you? A. Reles.

Q. Now I am asking you if you know a man named Sandy Reles? A. No, sir.

Q. Never heard of Sandy Reles, is that right? A. No, sir.

Q. Wasn't Sandy Reles the shylock that carried on business right in the neighborhood of this Rosen candy store? A. No, sir; don't even know him, sir.

2556

Q. The first thing that Strauss said to you when you say you were sitting in your car on the Friday before the Sunday upon which Rosen was killed, was to go out and get a car; is that right? A. In the presence of all of them Friday at one o'clock in the afternoon.

Q. He said that to you privately, didn't he? A. No, sir.

Q. And then you immediately went out to get a car, didn't you? A. No, sir; I went to get a drop first.

Q. Went to get a drop? A. Yes, sir.

Q. You knew exactly where to go to get a drop, didn't you? A. I cruised around, sir, first.

Q. Cruised around? A. Yes, sir.

Q. You knew that neighborhood thoroughly, didn't you? A. Yes, sir.

Q. You had lived there as a boy, hadn't you? A. Yes, sir.

Q. You had driven through every street in Brownsville, hadn't you? A. Yes, sir.

Q. And when you raised your eyes up and looked at the ceiling, giving us this route that you say you drove about, you had driven over those streets maybe a hundred times, had you not?

2558

Mr. Turkus: Objected to. That is not the testimony at all.

Mr. Talley: I still insist, if your Honor please, I am cross-examining this witness and I should be allowed to continue.

Mr. Turkus: But that is no license to misquote testimony.

Mr. Talley: The District Attorney seems to forget, if he ever knew—

2559

The Court: He said he was familiar with the locality.

Mr. Talley: I want to press it further than that.

The Court: You may.

Mr. Talley: Thank you.

Q. You knew every one of these streets that you testified to as the route that you were told to take by Capone? A. Never forget that.

2560

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Mr. Talley: I move to strike that out.

The Witness: Louis Capone made sure of that.

Mr. Talley: And I ask for a direct answer to my question.

The Witness: Louis Capone made sure of that and I never forgot it.

Mr. Talley: I move that that be stricken as not responsive.

The Court: Yes. Yes or no?

2561

Mr. Rosenthal: Your Honor has admonished this witness several times. Evidently he does not understand what the word "admonish" means. I am going to ask your Honor to tell this witness, not admonish him, that it is improper for him to make statements unless he is asked a question and to tell him to refrain from doing it, just as you would any other witness that you would tell that you would punish him for contempt if he disobeys the orders of the Court. I ask you to tell this witness in plain language that he should not volunteer any information here without a question being asked.

2562

Mr. Turkus: May I say to your Honor that there is a rapid fire between the questioner and the witness and those kind of responses are invited by that type of repartee. I consent that he be admonished and I consent that he be instructed.

The Court: One of the favorite duties that a Judge has to perform in the course of a trial is to admonish a lot of people, the ones who answer the questions and

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the ones who ask them, and every once in a while there is a slip-up by everybody and, regardless of who it is, the Judge has to repeat the admonition.

(To witness) Do not volunteer evidence. Simply answer the questions. Pay strict attention to the questions.

Q. Do you understand what the Judge has just said to you, Bernstein? A. Yes, sir.

2564

Mr. Rosenthal: Did your Honor strike that out, before I sit down?

The Court: Yes.

Q. Had you ever hired one of these garages where you hired this particular one, before? A. No, sir.

Q. Is this the first time you hired one of these small garages as a drop? A. Before that, sir? Past 1936 I got plenty of drops, sir, but this was the first one, sir.

Q. This is the first time you ever hired a drop? A. Yes, sir, but I had a different drop, sir.

2565

Q. You had what? A. Had a different drop.

Q. You mean you had a drop that was already engaged or rented by you? A. No, sir, where I used to keep my car, sir.

Q. In a drop? A. That is what you call a drop, too, because I used to keep sometimes stolen cars there.

Q. You used to keep stolen cars in your drops? A. Yes, sir, whenever I got orders.

Q. What? A. Whenever I got orders.

2566

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Mr. Talley: I move to strike that out.

Mr. Turkus: I move that it stand.

The Court: Strike it out.

Mr. Talley: It cannot stand.

Q. You stole automobiles and put them in drops long before 1936, didn't you? A. Whenever I got orders, sir.

Q. What? A. Whenever I got orders, sir.

2567

Mr. Talley: I move to strike it out and I ask for a response to my question.

The Court: Just say yes or no.

The Witness: Yes.

Q. And you stole cars and put them in drops long before 1935, didn't you? A. Might have been, sir.

Q. What is your answer? Is it a fact or isn't it? A. Might have been, sir.

Q. Is that your best answer, that it might have been? A. Yes, sir.

2568

Q. Don't you know? A. Yes, yes, about ten or twelve cars in that time.

Q. You what? A. About ten to twelve 'cars.

Q. Ten to twelve cars before 1935? Up to 1936.

Q. Before 1935 you had stolen ten to twelve cars, is that right?

Mr. Turkus: I object to it. He just said 1936. Why quibble about it?

Mr. Talley: I object to the District Attorney's comment and statement as to my quibbling about anything. This is serious business.

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2569

Mr. Turkus: Not the way you go about it. I object to it.

The Court: He did say 1936. Sustained.

Mr. Talley: Exception.

Q. Did you steal cars in 1935? A. Yes, sir.

Q. Did you steal cars in 1934? A. Yes, sir.

Q. Did you steal cars in 1933? A. Yes, sir.

Q. So that you were an automobile thief two or three years before you ever met the defendant Weiss, weren't you?

2570

Mr. Turkus: Objected to as already answered.

The Court: Overruled.

A. Yes, sir.

Q. So those automobiles were not stolen because Weiss gave you any orders, were they?

A. Wait a minute, sir.

Q. Answer my question. A. Wait a minute.

Mr. Turkus: The witness is trying to make an explanation and he stops him.

2571

Mr. Talley: I want an answer to my question without any statement.

Mr. Turkus: The witness has a right to answer.

The Court: What is your answer?

The Witness: I knew Weiss to 1935.

The Court: You began to know him then?

The Witness: 1935.

2572

Sol Bernstein—For People—Cross

Q. And before 1935 you have told us that you stole cars? A. Yes, sir.

Q. And that you stole cars in 1934? A. Yes, sir.

Q. You stole cars in 1933, didn't you? A. Yes, sir.

Q. In 1935, when you say you met the defendant Weiss, where did you meet him? A. I met him on Amboy and Pitkin, in a rental station, rent out cars.

2573

Q. In a renting station at Amboy and Pitkin? A. Yes, sir.

Q. What time of day did you meet him? A. Don't remember, sir.

Q. What month was it that you met him there? A. Can't tell you that, sir.

Q. Who introduced you to him? A. Louis Capone and Harry Strauss.

Q. Those two were in that station and introduced you in 1935, is that right? A. Yes, sir.

Q. You don't know what month it was? A. No, sir.

2574

Q. Don't know whether it was winter- or summer-time? A. Yes, sir.

Q. Is that right? A. That is right.

Q. Was it in the spring of 1935? A. Can't tell you that, sir.

Q. Was it in the summer? A. I don't remember, sir.

Q. Was it in the fall? A. Can't tell you.

Q. Was it in the winter of 1935? A. Can't tell you that. It might be one of them.

Q. What were you doing in this automobile rental place? A. What was I doing? I passed. I used to hang around Amboy and Sutter, and I passed up to Pitkin Avenue and Louis Capone

called me in, into the store. That was my shylock, Amboy and Sutter, and the store was a block away, Amboy and Pitkin.

Q. And you found Mendy Weiss there, did you? A. Yes, sir, with Louis Capone and Harry Strauss.

Q. And how long did you stay with them? A. About fifteen minutes.

Q. Did you talk with him? A. Yes, sir.

Q. Did he talk to you? A. Yes, sir.

Q. How was he dressed? A. That I can't tell you, sir.

2576

Q. That you don't remember? A. No, sir.

Q. Do you remember any date in 1935, such as Election Day? A. I know. What did you say? I know there is twelve months, that's all I can tell you. I know every month, but I don't know what month it was.

Q. Don't know one from another?

Mr. Turkus: Objected to. That is not his testimony. He says he does know one from another.

2577

Q. Do you know the difference between winter and summer? A. Yes, sir.

Q. Do you know the 4th of July, that in the twelve months that you know about there comes a day that is known as the 4th of July? A. Yes, sir.

Q. Now, was this meeting that you speak about, was that before the 4th of July or after the 4th of July? A. I can't tell you that, sir.

Q. Do you know the holiday called Labor Day that comes in September of these twelve months that you are familiar with? A. Yes, sir.

2578

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Q. Was this meeting before or after Labor Day of 1935?

Mr. Turkus: I object to it. I think it is quite clear the witness is not able to fix the time after these extended questions.

Mr. Talley: That is for the jury.

The Court: He may be able to if he uses a different method, that is, tries to remember the circumstances of the meeting.

2579

Mr. Turkus: But he is not asked that.

The Court: Whether it was indoors or outdoors.

Mr. Talley: Is there a question pending?

The Court: I did not ask a question; I was suggesting. Overruled. Do you remember.

The Witness: I don't remember, sir. It was in a store.

2580

Q. Do you remember whether you had an overcoat on or that you didn't? A. I can't tell you that, sir. Don't remember.

By the Court:

Q. Do you remember any of the circumstances of the meeting? A. That is the only time I seen Mendy Weiss there.

Q. Where was it? A. This was on Amboy and Pitkin, in a rental station.

Q. Was there anything about the circumstances of the meeting that would give any key

as to what time of the year it was? A. Yes, I was supposed to do something for them, sir.

Q. Had it any relation, to do with any of the seasons of the year? A. I don't know what you mean, sir.

Q. What were you supposed to do? A. I was supposed to finger somebody.

Mr. Rosenthal: I object to that.

The Court: I don't mean that. Strike that out. The jury disregard it.

By the Court:

Q. Have you in your mind now a picture of that meeting at the service station or gasoline station? A. It was not a service station. It was a store where they rent out cars.

Q. The meeting was not outside? A. No, in the store, sir.

By Mr. Talley:

Q. Did you see Mendy Weiss after that meeting? A. After that here?

Q. After the meeting in 1935 that you say you were introduced to him at. A. Yes, sir.

Q. Did you see him frequently? A. No, sir.

Q. How frequently did you see him between that meeting in 1935 and the meeting that you say took place in 1936, in September? A. Just a few times, sir.

Q. How many do you call a few, two? A. Maybe about two or three, sir.

Q. About two or three, you say? A. Yes, sir.

Q. You never knew him very well, did you?

2584

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A. Just on account of that, when I got the contract to finger somebody, sir.

Mr. Talley: I move to strike that out, and I ask an answer to my question.

The Court: Strike it out.

Mr. Turkus: I do not think the jury heard it.

The Court: Say nothing more about that.

2585

Q. (Pending question read.) A. I must know him real well now.

Q. Did you know him very well between the meeting in 1935 and the meeting which you say took place in September, 1936?

Mr. Turkus: I object to it as already answered, and it is dangerous territory. I do not want anything to happen.

The Court: He can answer it yes or no.

A. Yes.

2586

Q. You did know him very well? A. Yes.

Q. But you only saw him two or three times, is that right? A. Yes, sir.

Q. He was a taller man than you, wasn't he? A. Yes, sir.

Q. How tall was he? A. I don't know. I think he is taller than me, sir.

Q. And you are what, 5 foot 7, did you say? A. I am 5 foot 8 or 9.

Q. And he was a heavier man than you, wasn't he? A. Yes, sir.

Q. Always much heavier? A. Yes, sir.

Q. Would you say he was around 6 feet tall?

A. I think so, sir.

Q. Would you say he weighed about 200 pounds? A. I don't know how much he weighed; I never weighed him.

Q. How much did you think when you saw him in 1935 or 1936?

Mr. Turkus: I object to it.

Mr. Talley: I want him to describe this man he says he knew very well.

2588

The Court: Did you notice him, and, if you noticed, do you remember?

The Witness: He was fatter than that.

The Court: Fatter or thinner?

The Witness: Fatter.

Q. Fatter than he is now? A. Yes, sir.

The Court: In the face or in the body?

The Witness: All over.

Q. After you got the drop, or found the drop, what was the next thing you did in September, 1936? A. After what, sir?

2589

Q. After you went out and found the drop, what did you next do? A. I went and got in touch with Mugsy Cohen.

Q. Where did you get in touch with Mugsy Cohen? A. On Amboy and Sutter.

Q. Where? A. On Amboy and Sutter.

Q. Amboy and Sutter Avenues in the Borough of Brooklyn? A. Yes, sir, Brownsville section.

Q. And what time did you get in touch with him? A. About eight o'clock at night, sir.

Q. Eight o'clock at night? A. Yes, sir.

2590

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Q. That was Friday night, wasn't it? A. Yes, sir.

Q. Sure about that? A. Positively, sir.

Q. And it was Friday afternoon when you started out to get your drop, wasn't it? A. Yes, sir.

Q. So that eight o'clock you met Mugsy Cohen and you and he started out to steal an automobile; is that right? A. No, sir.

2591

Q. What did you do after you met him? A. I seen him; I told him to do me a favor, twelve o'clock to come around on Amboy and Sutter, I need a car.

Q. Come down at twelve o'clock at night? A. Yes.

Q. Where? A. Amboy and Sutter.

Q. The same place you were talking? A. Yes, and told him to get a jump box, a hot box; said, "Bring around your hot box."

Q. To bring around a hot box? A. Yes, I told him that I need a car, sir.

2592

Q. You already had stolen up to this time seventy-five or a hundred cars. You say that you had to get Mugsy Cohen to help you steal this one; is that right?

Mr. Turkus: Objected to. That is not the testimony. He said before 1936 it was ten or twelve; after 1936 was the majority. Consequently, it has been answered.

Q. You had stolen a good many automobiles before this talk with Mugsy Cohen, hadn't you? A. Yes, ten to twelve.

Q. Still you had to go to Mugsy Cohen to

help you steal this particular car; is that right?

A. Yes, sir.

Q. What time did you meet Mugsy Cohen?

A. Twelve o'clock at night, on Amboy and Sutter.

Q. You are sure it was eight o'clock on Friday night that you saw Mugsy Cohen and talked to him about this car that was going to be stolen, is that right? A. About eight o'clock at night, sir.

Q. You are sure about that, are you? A. Yes, sir.

2594

Q. And you are sure it was eight o'clock on Friday night? A. Yes, sir.

Q. Were you asked these questions and did you make these answers here in this court-room on last Friday (page 507):

"Q. After you got the lock for the drop, what did you do next? A. I went to Amboy and Sutter.

"Q. About what time was that? A. It must have been about three o'clock.

"Q. When you say three o'clock, do you mean three o'clock Saturday morning? A. Yes, sir.

2595

"Q. Or Friday morning? A. Three o'clock Friday morning—it was in the afternoon, three o'clock in the afternoon; three o'clock in the afternoon."

That is repeated three times in the testimony.

"Q. I was confused myself as to the time. This is three o'clock in the afternoon?" and then you said, "Yes, sir."

"Q. What did you do? A. Where?

"Q. Where you went at three o'clock in the afternoon. A. I seen Mugsy Cohen.

2596

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“Q. Who is Mugsy Cohen? A. A car thief and a radio crook.”

Were you asked those questions and did you answer as I have read to you, on last Friday when you were testifying in answer to the District Attorney? A. What you read?

Q. What? A. I seen Louis Capone about one o'clock on Sackman and Livonia.

2597

Mr. Talley: I move to strike out that answer as not responsive.

The Witness: I really don't know what you mean.

Mr. Talley: The question is a simple one, I submit to the Court: Was he asked those questions and did he make those answers? I want the answer yes or no.

The Witness: If it is in the book, I said it.

Mr. Cuff: I move to strike the answer out.

The Witness: If it is in the book, I said it.

2598

Q. Do you remember now that you testified that it was three o'clock in the afternoon that you met Mugsy Cohen? A. That is the time I got the drop, sir.

Mr. Talley: I move to strike that out.

Mr. Turkus: I move it stand. Now he is pressing him for his recollection.

Mr. Talley: I press him for his recollection of his own testimony forty-eight hours ago.

Mr. Turkus: Your Honor, I have an objection, that is, request, that the answer stand as responsive to the question, on his present recollection.

Mr. Talley: I ask your Honor to direct this witness to answer my simple question yes or no, was he asked these questions and did he make these answers?

Mr. Turkus: You have gone beyond that now.

The Court: Mr. Witness, you testified on Friday that after you bought the cheap padlock for the drop, that you then, at about three o'clock in the afternoon of Friday, went and saw Mugsy Cohen; that thereafter, about two o'clock on Saturday morning, you and Mugsy stole the car on Lefferts Avenue. Do you remember that?

The Witness: Yes, sir.

The Court: Is that true or isn't it?

The Witness: I am a little tangled up, sir. I got out of the drop was three o'clock, sir.

Mr. Cuff: I move to strike the answer out.

The Witness: If it is in the book, I said it.

Mr. Talley: What?

The Witness: If it is in the book, I said it.

Mr. Talley: It is in the book. I ask you again: Did you say it?

Mr. Turkus: I object to the question, has not taken in all the testimony. There is page 598 in the record, too.

2602

Col Bernstein—For People—Cross

Mr. Talley: What is that, Mr. Turkus?

Mr. Turkus: I said you did not read all the Q and A.

Mr. Cuff: I object to the statement of the District Attorney.

The Court: What page is this read from?

Mr. Cuff: 507.

2603

Mr. Talley: I read everything, without passing a line or a word, and Mr. Turkus knew it because he was following me as I read it.

Mr. Turkus: And I turned the page. You did not.

Mr. Talley: What part didn't I read?

Mr. Turkus: I turned the page. Turn the page.

Mr. Talley: I object to the District Attorney's statement. I began at the top of page 507 of the minutes of this trial and I read every question and every answer down to where I concluded my questioning to him.

2604

Mr. Turkus: Nobody said you didn't.

Mr. Talley: "Where you went at three o'clock in the afternoon."

The next is: "Who is Mugsy Cohen? A. A car thief and radio crook." I read that.

Then there is another question: "Did you talk with Mugsy Cohen? A. Yes, sir." That I did not read because I was not at the moment interested.

"Q. What did you and Mugsy Cohen

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2605

do? A. I asked him—" That takes in the entire page.

I will not have any insinuations in this case that I am not reading properly and correctly anything that I attempt to read. I won't permit this District Attorney to do what no other District Attorney in this state would assume to do, and if I have to appeal to this Court for protection against that kind of tactics, I will do it, but I can, fortunately, take care of myself.

2606

Mr. Turkus: Nobody said he did not read page 507.

Mr. Talley: You did say that I did not read all that was on that page. Now don't do it again.

Mr. Turkus: Now don't be getting so sensitive. You know your integrity was not challenged.

The Court: If this continues, the Court will have to send out for its gavel.

Mr. Turkus: I am sorry.

2607

Mr. Talley: Send out for it and use it against the District Attorney. It is increasingly necessary. You won't need it as far as the defense is concerned.

The Court: There has been so much disturbance the Court does not know what it has to rule on. Will you read it?

By the Court:

Q. What is your best recollection as to what time you met Mugsy and talked to him about

2608

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stealing the car? A. I think it was about eight o'clock, sir.

Q. What time? A. Eight o'clock at night.

Q. Eight, not three? A. That is right.

2609

Mr. Talley: That was not my question. I am questioning him on the very simple fact as to whether he testified it was three o'clock in the afternoon or eight o'clock at night, and I am entitled to an answer on whether he testified to that or not. Now he gives us his usual stock reply: "If it is in the book, I said it," which is not good enough for me. I want his recollection as to whether he said it or whether he did not. If he does not recollect what he testified to here in this courtroom on last Friday, it is a pretty serious strain upon the credulity of the jury and everybody else as to what happened in 1936.

2610

Mr. Turkus: He could not remember, the counsel.

The Court: If even counsel in the court can get confused in a discussion such as this, the witness may or may not be right in saying he was confused about that.

Mr. Talley: He does not say he was confused. He will not answer whether he testified, irrespective of the fact I am asking him did he testify to this.

The Court: He does not have to answer he testified; that is the record.

Mr. Talley: I think he does have to testify on the question either of credibility

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2611

or his recollection, particularly where he is testifying about a crime that happened in 1936, five years ago.

The Court: The Court rules that this is the record, that it is established that he so said. Please let it go at that.

Mr. Rosenthal: May I except to the Court's ruling?

The Court: Certainly.

Mr. Cuff: May we except, too?

The Court: Certainly.

2612

By Mr. Talley:

Q. What do you say now, Bernstein, was it eight o'clock or was it three o'clock? A. Eight o'clock, sir.

Q. Eight o'clock? A. Yes, sir. I can explain you how, sir, if you want me to.

Mr. Cuff: I move to strike out the witness's voluntary statement.

The Witness: I just got mixed up, that's all.

2613

The Court: Let that stand.

Mr. Cuff: I take exception. No question to the witness at that time at all.

Q. Do you want to explain why you said three o'clock— A. Yes, sir.

Q. —Friday afternoon, and repeated it four or five times on one page of testimony? Is that what you want to explain, when you now come in here—this is Monday—you testified the last court day, Friday—now you come in and say the meeting was at eight o'clock? Do you

2614

Sol Bernstein—For People—Cross

want to explain something in connection with that? A. Yes, sir.

Q. Go ahead and explain it. A. Because I met them at one o'clock, sir, at Sackman and Livonia. Then I had to go and get the drop. It took me at least two hours, cruising around, to find that.

The Court: Then what?

The Witness: I hung around at Amboy and Sutter until Mugsy Cohen came around, because he used to borrow money off me.

2615

The Court: Did you time yourself at any time by watch or clock?

The Witness: No, sir.

The Court: Is the estimate of time that you are now giving based upon figuring the length of time that you did one thing or another?

The Witness: Yes, sir.

The Court: In the course of that procedure?

The Witness: Yes, sir.

2616

Mr. Cuff: Object to that, if your Honor pleases.

The Court: Overruled.

Mr. Cuff: Exception.

Q. Now, having answered the Court's questions the way you did, do you say that you were confused between the time of three o'clock in the afternoon and eight o'clock in the evening?

A. Yes, sir.

Q. Before you took the stand here on Friday, you had had many conferences with somebody

in the District Attorney's office about your testimony, didn't you? A. No, sir.

Q. When before Friday was the last time you went over, with any representative of the District Attorney's office, your testimony? A. Never did, sir.

Q. You never did? A. No, sir, not since this case.

Q. You never went over with Mr. Turkus what you were going to testify when you were called in this trial? A. You mean before, sir? Before?

2618

The Court: At any time?

Q. Before Friday? A. Before Friday.

Q. Before last Friday? A. District Attorney Turkus asked me questions and I answered them, sir. That was about a week ago, sir.

Q. About a week ago? A. Yes, sir.

Q. You testified on Friday. What day did you go over your questions and answers with Mr. Turkus?

2619

Mr. Turkus: I object to that. He did not say he went over his questions and answers.

A. He asked me questions. I answered them. That is all.

Mr. Talley: I did not think you were so sensitive about your investigation. I do not see much difference in what I said and what the witness said.

2620

Sol Bernstein—For People—Cross

Q. Mr. Tarkus asked you questions, didn't he?
A. And I answered them.

Q. And that were the answers that you told him you would make to his questions when you were called as a witness in this room, is that true? A. I do not understand what you mean. I was talking about this here case, sir.

By the Court:

2621

Q. Where did this conference occur? A. In the District Attorney's office.

Q. In this building or in the other building?
A. In the other building, sir.

Mr. Talley: When?

Q. What day of the week, do you remember?
A. I think it was about two weeks ago.

Q. Do you remember the day of the week?
A. It was on a Tuesday, sir, something like that.

By Mr. Talley:

2622

Q. When do you say it was? A. On a Tuesday, sir.

Q. On Tuesday of last week? A. It might have been in the hotel, sir, too.

Q. It might have been when? A. In the hotel.

The Court: About how long ago was it?

The Witness: About two weeks ago.

Q. Why, you remember the last time you went over your testimony in the District Attorney's office, don't you?

Sol Bernstein—For People—Cross

2623

Mr. Turkus: I object to the form of the question.

The Court: Sustained. He said so.

Mr. Talley: Exception.

Q. Don't you remember when you last talked with Mr. Turkus or his associate, Mr. Klein, or Mr. Joseph, about this case? You remember that, don't you? A. Yes; about two weeks ago, sir.

Q. How many times did you go over it with them, or any of them?

2624

Mr. Turkus: I object to the form of the question.

The Court: Overruled.

A. How many times, you mean, sir?

The Court: How many times were you questioned?

The Witness: About two or three times, sir.

2625

Q. You have been in custody since early last year, haven't you? A. Yes, sir.

Q. Some time in April, 1946, is that right? A. Yes, sir.

Q. That is the time you gave yourself up? A. Yes, sir.

Q. And do you say you have only been questioned two or three times about this case by anybody from the District Attorney's office? A. Asking me questions?

2626

Sol Bernstein—For People—Cross

Mr. Turkus: I object. That is not the testimony. Two or three times by Mr. Turkus.

The Court: So I understood.

Mr. Talley: I said Turkus, Klein, Joseph.

Mr. Turkus: That is the same thing. We did not get this file until the summer of 1941.

2627

Mr. Cuff: I object to that statement, if your Honor pleases.

The Court: The jury, disregard it. It is not evidence.

Mr. Talley: I am still waiting for the witness' answer.

The Court: You say you had only two or three sessions of questions and answers?

The Witness: Yes, sir, and District Attorney O'Dwyer asked me questions, too, and I answered them, sir.

The Court: How many times?

2628

The Witness: Five or six times, sir.

Q. So, now you say you were interrogated or asked questions four or five times, or five or six times, since the early part of 1940, when you gave yourself up? Is that your answer now?

Mr. Turkus: I object to the form of the question, "now", carrying with it an implication.

The Court: Overruled. Is that substantially correct?

The Witness: Yes, sir.

Q. And before you appeared here on Friday last and testified, when was the last time that you went over your testimony with any member of the District Attorney's staff? A. I don't get you, sir. Nobody asked me questions until two weeks ago, sir. That was the last time, if that is what you mean, sir.

Q. Which is it, two or three weeks ago, or a week ago? A. About two weeks ago.

Q. Didn't you say a week ago just a few minutes ago when I asked you? A. Yes, sir.

Q. Now you make it two weeks? A. I am not sure. It was a week or two.

Q. Two or three weeks, is that it? A. I stopped counting days, sir.

Q. You do not care what you say on the witness stand, do you? A. Telling the truth about everything in this case, everything.

Q. You did not tell the truth in Monticello, did you? A. Because I don't want to give no information.

Q. Did you tell the truth?

Mr. Cuff: I move to strike it out.

Mr. Turkus: I consent to it, and I object to the question as repetitions. We have been over it.

The Court: Sustained.

Mr. Talley: Exception.

Q. You say you are telling the truth on this trial? A. All of the truth, and I told the Grand Jury the truth, too.

Q. You are expecting some consideration for your testimony, aren't you? A. No, sir.

Q. None whatsoever? A. No, sir.

2632

Sol Bernstein—For People—Cross

Q. You know that you took part in the Rosen murder, don't you? A. Yes, sir.

Q. And you know that you were not indicted for this crime, were you? A. Yes, sir.

Q. By the answer you mean that you know that, is that what you mean? A. Yes, sir.

Q. And you were called before the Grand Jury considering this Rosen killing, weren't you? A. Yes, sir.

2633

Q. And you know that you did not sign any waiver of immunity, don't you? A. Yes, sir.

Q. And you know that you were not asked to sign any waiver of immunity? A. Yes, sir.

Q. And you know that when you are called before a Grand Jury and do not waive immunity, you cannot be indicted? A. I don't know that.

Q. You don't know that? A. No, sir.

Q. Never heard of that before? A. What is that, sir?

Mr. Turkus: That is a legal question.

2634

Q. In all your criminal career, did you never hear that if you are brought to testify before a Grand Jury you cannot be indicted for the crime upon which you testify?

Mr. Turkus: That is objected to. It is a legal question.

Mr. Talley: This is a crook. He knows more about that phase of the law than even you do.

Mr. Turkus: Do not include yourself. You are very bright.

A. I do not know, sir.

Sol Bernstein—For People—Cross

2635

Q. You testified before the Grand Jury in the Yuran case, didn't you? A. That is right.

Q. And did you tell all of the truth there? A. Yes, sir.

Q. It was only on the trial that you did not tell the truth?

Mr. Turkus: Objected to.

Q. Is that right?

Mr. Turkus: That is not his testimony.
The Court: Sustained.

2636

Q. You did not sign a waiver of immunity in the Yuran case, did you? A. No, sir.

Mr. Turkus: Objected to.
The Court: Overruled.

Q. You got immunity in that case, didn't you? A. What do you mean by immunity?

Q. You were not indicted in that case, were you? A. No, sir.

2637

Q. So the only two cases of murder which you have admitted taking part in both cases you have been given immunity from punishment, haven't you?

Mr. Turkus: I object to it. That is not his testimony.

The Court: Sustained. He has not admitted taking part in the Yuran murder.

Q. Didn't you take part in the Yuran killing? A. I told you what I done, sir.

2638

Sol Bernstein—For People—Cross

Q. Didn't you take part in it? A. I was not there when they killed him, sir.

Q. Weren't you the man that led the police up there to where a pickaxe or some other tool was buried by the people who did the murder?

A. Pickaxe?

Q. Yes, some implement that was used? A. No, sir.

Q. Were you the man who took the police to where the body was buried? A. Yes, sir.

2639

Q. How did you know where it was buried? A. How did I know?

Q. You heard my question. A. Because I was there.

Q. How did you know it was there? A. I was there.

Q. What? A. I was there when they buried him.

Q. Did you assist in the burial? A. Yes, sir.

Q. Helped put the body in the ground? A. Yes, sir—no, sir.

Q. What? A. No, sir.

2640

Q. You did not do that? A. No, sir.

Q. What did you do in connection with burying this man? A. I was watching, sir.

Q. You were watching? A. Yes, sir.

Q. That is, you were there to give warning in case anybody came and saw them burying this murdered man, is that right? A. Yes, sir.

Q. You were a lookout? A. Yes, sir.

Q. Was Yuran shot? Is that how he was killed? A. Yes, sir.

Q. And you pointed out to the police where the .32 calibre gun with which Yuran was killed was hid, didn't you? A. I pointed out where he threw the gun.

Q. Where what? A. Where the gun was thrown. I did not have it.

Q. How did you know where the gun was thrown? A. Because I was there with Harry Strauss, sir.

Q. When the killing happened? A. No, sir.

Q. How soon after the killing? A. After he was hid, sir.

Q. After what? A. The body was hid.

Q. You saw where the gun was thrown? A. Yes, sir.

Q. By Harry Strauss? A. Right in the field.

Q. And then you showed a pickaxe where that was buried or hidden? A. No, sir.

Q. Stop and think a minute. A. No, sir.

Q. Didn't you show the police where the .32 calibre gun was and also where a pickaxe was? A. No, sir.

Q. Where was Yuran buried? What kind of a place? A. Near the Loch Sheldrake Inn.

Q. Near the Loch Sheldrake Inn? That is a hotel, isn't it? A. Yes, sir.

Q. Where was he carried from to that place near the Loch Sheldrake Inn? A. From Fallsburg, sir.

Q. Did you drive the car? A. Wait a minute. Let me get this straight.

Q. Yes, get it straight by all means. A. Will you repeat it, sir?

2642

2643

The Court: Did you drive the car from Fallsburg?

The Witness: Fallsburg? They drove a truck, sir.

The Court: Did you drive it?

The Witness: No, sir.

2644

Sol Bernstein—For People—Cross

Q. Were you in the truck? A. Yes, sir.

Q. Did they have the body of Yuran in the truck they drove? A. Yes, sir.

Q. So you drove on the truck that carried the body of Yuran who had just been murdered, is that right? A. Yes, sir.

Q. Where were you when he was murdered?

A. Where was I? I was taking a walk with somebody, sir.

Q. Taking a walk where? A. Around Fallsburg, sir.

2645

Q. In Fallsburg? A. I think so. It was Fallsburg.

Q. And did you see Yuran alive there? A. No, sir.

Q. What? A. I didn't even know, sir.

Q. You don't even know?

Mr. Turkus: He did not say that. Ob-
jected to. Judge Talley repeats an answer
differently than the witness gave it. I
object to it.

The Court: Overruled.

2646

Q. Bernstein, you knew that Yuran was going to be killed, didn't you? A. No, sir.

Q. You did not? A. No, sir.

Q. You just happened to be there? A. I took a walk with somebody, sir, and then came along a car with a body.

Q. And they came along with a truck, did they, with his body in it? A. No, sir.

Q. Where did you first see the body? A. In Hymie Yuran's car.

Q. In a garage? A. No, sir, in the field.

Q. The first time you saw the body was in the fields? A. Yes, in the car first. They threw out his body.

Mr. Talley: I cannot understand that talk.

The Court: His body was in an automobile; it was thrown into a field and then picked up and put into a truck?

The Witness: No, sir.

Q. Is the answer yes, sir? Did you help to put the body in the truck? A. Yes, sir.

The Court: You mean the shooting must have been in the automobile?

The Witness: Yes, sir, but I was not there, sir.

The Court: You came up afterwards?

The Witness: Yes, sir.

Q. What kind of a truck was this that you drove from Fallsburg to Loch Sheldrake Inn?

A. I think it was a bakery truck.

Q. Did you ride inside the truck or on the seat? A. Inside the truck, sir.

Q. With the body? A. Yes, sir.

Q. This man had been shot, hadn't he? A. Yes, sir.

Q. What was the pickaxe for? A. To bury him, sir.

Q. What time of the day or night was he buried? A. I think about twelve o'clock, sir.

Q. At night, midnight? A. Yes, sir.

Q. And you acted as a lookout while they

2650

Sol Bernstein—For People—Cross

were digging the grave for him and throwing him in, is that right? A. Yes, sir.

Q. And your purpose was to give warning if anybody came along that they were to be on their guard against, is that right? A. Yes, sir.

Q. So you do not deny that you are an accomplice in the Yuran murder, do you?

Mr. Turkus: I object to it.

The Court: Sustained. That is not an accomplice.

2651

Mr. Talley: Exception.

The Court: According to law.

Mr. Talley: He assisted them in disposing of the corpus delicti, of the evidence of the crime. Certainly it makes him an accomplice.

Mr. Turkus: That makes him an accessory after the fact.

Mr. Talley: It is both.

Mr. Turkus: First year criminal court book.

2652

Mr. Talley: Thank you for the education I got before you even started in. Don't attempt that with me, Turkus. You are making a grave mistake.

The Court: The Court has been three times interrupted while attempting to speak. This is an exhibition of bad manners.

Mr. Turkus: I am sorry. I apologize to the Court.

Q. After the body of Yuran was buried, what did you do? A. After Yuran's body was buried?

Q. You heard the question. Answer it.

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2653

Mr. Turkus: I object to it, argumentative.

Mr. Talley: I object to this constant repetition by this witness of questions so that he will get time to think.

Mr. Turkus: I object to the advance summation in addition.

The Court: Overruled.

Q. Answer the question, please. A. I went back to the hotel where I was staying, sir.

2654

Q. The hotel where? A. Oliver Hill in Woodbridge.

Q. Not in Fallsburg? A. No, sir.

Q. Did you go back to Fallsburg where you brought the body from? A. What did you say, sir?

Q. Did you go back after you buried this body at midnight? A. I told you.

Q. Did you go back to Fallsburg where you had brought it from? A. I don't know what you mean.

Q. You do not? I am certainly using simple language. After the body of Yuran was buried, did you leave this field it was buried in? A. Yes, sir.

2655

Q. Was it wrapped up at all or was it just thrown in the grave? A. Was it wrapped up?

Q. Yes. A. I don't know, sir.

Q. You saw it being taken out of the truck, didn't you? A. Yes, sir.

Q. You helped them to take it out of the truck, didn't you? A. Yes, sir.

Q. You helped them to carry it over to a hole in the ground? A. Yes, sir.

2656

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Q. And you helped them put it in the grave?

A. No, sir.

Q. Well, just where did you lay off? You took the body out of the truck; you carried it over to the grave. What did you do then? A. I was watching, sir.

Q. Did you leave the body? A. Yes, sir.

Q. And then you went some place to watch?

A. Where they told me to watch.

Q. Where did you go to watch? A. Near the swimming pool.

2657

Q. How far was that from this grave that they dug? A. About fifty feet I think, sir.

Q. Not much farther than from where you are sitting to where I stand, is that right? A. I think further than that, sir.

Q. Was it as far as this table here where these distinguished newspaper men are sitting? A. A little further than that.

Q. Was it further than that? A. Yes, sir.

Q. Was it as far back as the wall of this court room? A. No, sir.

2658

Q. It was not quite as far as that? A. I don't know about that. I am just giving you an idea.

Q. You just said it was fifty feet. Are you as far wrong on distance as you are on dates? A. I think where the dark fellow is, the curly haired fellow.

The Court: This room is supposed to be 45 feet deep.

Mr. Talley: From wall to wall?

The Court: I doubt if it is that. But I have been told it is 45.

Mr. Talley: What does your Honor

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2659

estimate the distance from the witness chair to where this gentleman is sitting?

The Court: The Court does not qualify as an expert.

Mr. Talley: I will take your Honor's statement it is 45. Mr. Foreman, what do you say the distance is from the witness chair—

Mr. Turkus: This is Talley law.

The Court: This is grossly wrong and Court is reluctantly caused to reprimand—

2660

Mr. Talley: Judge, it has been done thousands of times, to have a foreman of a—

The Court: You will not interrupt the Judge.

Mr. Talley: I did not know the Court was continuing to speak.

The Court: Will you please sit down until the Judge is finished and I tell you?

Mr. Talley: I will be delighted to get the opportunity.

The Court: It is elementary that this is a departure from what the law permits. The Judge knows better than that. Now proceed.

2661

Mr. Talley: I request that the foreman of the jury be permitted to estimate for the record what he regards as the distance between the witness chair, where the witness is testifying, and the point which he pointed out in the court room.

The Court: The Court reluctantly has been obliged to reprimand you for the

2662

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previous question. You are doubly reprimanded for this. This is disorderly. It is nine minutes to four now and I am not going to permit the closing part of this session to become a staged brawl by counsel, so we are going to take a recess.

Mr. Talley: I take exception.

2663

The Court: Gentlemen of the jury, please do not discuss the case, let nobody talk to you about it and keep your minds open. We will resume tomorrow at ten o'clock. Everybody be in order while the witness is re-examined.

Mr. Talley: Note my exception to your Honor's statement, your Honor's ruling, your Honor's observations.

The Court: Also, gentlemen, please remember the other admonition of the Court as contained in the instructions previously given. The jury may leave. The defendants are remanded.

2664

(Thereupon an adjournment was taken until Tuesday, October 28, 1941, at ten a.m.)

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2665

Brooklyn, N. Y., October 28, 1941.

TRIAL RESUMED

SOL BERNSTEIN, a witness for The People, resumed the stand and testified further as follows:

Cross-examination by Mr. Talley (continued):

Q. Mr. Bernstein, what did you do with the radio you said you took from the car that was stolen by you and Mugsy Cohen? A. I took the radio and threw it in the Bay; I broke it up.

2666

Q. You threw it in Canarsie Bay? A. Yes, sir.

Q. First you say that Cohen took it out of the car, or you took it out of the car? A. Cohen took it out of the car.

Q. What did Cohen do with it? Did he take it away from the drop or did you take it away? A. I rode him away with it.

Q. You rode him away with it? A. Yes, sir.

Q. When you parted, did he have the radio or did you? A. What do you mean?

2667

Q. You rode him away with it. To what place did you ride him? A. Around the Brownsville section.

Q. Whereabouts in the Brownsville section? A. Amboy and Sutter.

Q. Did he get out of the car? A. Yes, sir.

Q. Did he take the radio with him? A. Yes, sir.

Q. Where did he take it? A. He took it out into a house.

Q. What house? A. I don't know; he went into the house.

2668

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Q. Not his house? A. I don't know, sir.

Q. You don't know what he did with it? A. No, sir.

Q. How did you get it again? A. How did I get it again? I went looking for him.

Q. Did you tell him you wanted the radio? A. Yes, sir.

Q. Then how did he get it back into your hands? A. He gave it to me.

2669 Q. Where? A. In the same place where I brought him to.

Q. In the same place where you took him? A. Yes, sir.

Q. Did he give it to you on the street or on the sidewalk? A. No, sir, I went in the hallway; he told me to wait in the hallway.

Q. Of what house? A. Amboy and Sutter Avenue.

Q. What number? A. I do not recall, sir. I did not take notice to the number.

Q. Whose house was it? A. I don't know, sir.

Q. Did you know that Cohen did not live there?

2670 A. I cannot tell you that.

Q. Where in the house did Cohen go to get the radio? A. I cannot tell you that, sir.

Q. Why did you take the radio out of the car? A. After I knew there was a murder I wanted nobody to get into any trouble, sir.

Q. You took the radio out of the car after you knew there was a murder, is that what you say? Will you repeat that? A. I did not want him to get in trouble; I did not want to get in any trouble myself.

Q. What did the radio have to do with getting in any more trouble than you were already in?

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2671

A. If you sell the radio they were liable to get the numbers.

Q. That is what you wanted to avoid, anybody selling the radio? A. Yes, sir, he was a radio thief.

Q. You told us he was a radio crook, an automobile thief, that is how you designated him. A. Yes, sir.

Q. But you were the one who took the radio out of the car, weren't you? A. No, sir, Mugsy Cohen took it out.

2672

Q. When did you see Mugsy Cohen last, if there is such a person, where did you see him last?

Mr. Turkus: I object to the question, "if there is such a person," carrying with it an implication or characterization that is improper.

Mr. Ta'ley: I am cross-examining him.

Mr. Turkus: I object to the form of the question, the objectionable portion being the part that starts with, "if there is such a person."

2673

The Court: No harm done. Objection overruled.

A. Sunday.

Q. The day before yesterday? A. I don't mean that day.

Q. That is what you said. A. I did not mean that, sir.

Q. When did you see him last. You know what "last" means. When was the last occasion? I cannot think of any other way of putting it. When did you last see him? There is

2674

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a limit to my vocabulary. A. Before I gave myself up.

Q. You gave yourself up in April of 1940? A. Yes, sir.

Q. You have not seen Mugsy Cohen since? A. No, sir.

Q. That is sure? A. Yes, sir.

Q. Where did you see Mugsy Cohen the last time you saw him? A. In Brownsville.

2675

Q. Whereabouts in Brownsville? A. Amboy and Pitkin.

Q. Where is that? What place is that? A. A bar and grill, sir.

Q. What is the name of the bar and grill? A. Weiner's.

Q. Will you speak up so we can hear you? A. Weiner's.

Q. How do you spell that? A. (Spelling) W-e-i-n-e-r-s.

Q. Did you talk about this case when you saw him? A. I never talked with anybody, sir.

Q. You never talked with anybody? A. No, sir.

2676

Q. You do not mean that? A. Yes, sir.

Q. You talked to the District Attorney's office, didn't you? A. Yes, sir.

Q. You talked with Captain Bals of the Police Department? A. Yes, sir.

Q. You talked with Mr. McDonough, the detective? A. No, sir, he was not there.

Q. At any time did you talk about this case with Captain McDonough? A. No, sir.

Q. You did not? A. No, sir.

Q. Even when you gave yourself up to Detec-

tive McDonough you did not talk to him about the case? A. Yes, sir.

Q. Is that what you want us to understand?

A. Yes, sir.

Q. Where is Mugsy Cohen now, do you know?

A. I don't know what is doing in the outside world, sir; the only time I know what is doing is when I read the papers or listen to the radio. In other words, I don't know what is doing on the outside.

Q. Well, since you have been living at the Half Moon Hotel—it must be a good place, the Half Moon Hotel—since you have been living at the Half Moon Hotel at Coney Island you have been taken out for walks on the Boardwalk?

2678

Mr. Turkus: I object to a remark about the Half Moon Hotel accompanied by a smile of derision, which I think makes the question objectionable. I object to it.

Mr. Talley: You cannot stop me from smiling. I say this is some hotel.

Mr. Turkus: I have an objection.

Mr. Talley: Stop your smiling. It would be a crime to make me stop it.

Mr. Turkus: I have an objection; I do not want to discuss personalities.

The Court: It would be a help to this trial if there was more smiling.

Mr. Turkus: Well, I will withdraw the objection.

The Court: The Half Moon Hotel is quite a place. I have stopped there.

Mr. Talley: You were in good company, Judge, if you want the record of

2679

2680

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this case to disclose it. But I would recommend you get another hotel.

Q. You were taken out on the Boardwalk, weren't you? A. No, sir.

Q. You had baseball games down there, didn't you? A. No, sir.

Q. Did you say you were or were not taken out on the Boardwalk? A. No, sir.

Q. You never were? A. Yes, sir.

2681

Q. Do you mean by that you have not been taken out on the Boardwalk for walks? A. No, sir.

Q. I will have to put it in your language: Were you taken out on the Boardwalk for walks at any time since you have been living in the Half Moon Hotel? A. No, sir.

Q. You were not—given any exercise at all down there; is that right? A. In the hotel, sir?

The Court: Outside of the hotel.

A. Yes, sir.

2682

Q. What does that mean? What do you mean by "Yes, sir"? A. Explain to me and I will tell you.

Q. You will have to speak up louder, I cannot be persistently asking this witness to raise his voice. We know he can. It is too much of a strain here to try to get this muttering.

Mr. Turkus: Your Honor put the question to the witness did he have exercise outside of the hotel, and to that question he responded in the affirmative, "Yes, sir."

The Court: Yes.

Mr. Talley: It is not clear to me, and I am sure it is not clear to the jury.

Q. You understand what I am saying to you?

A. You will have to explain me, sir.

Q. I will have to explain to you?

The Court: Speak louder; the jury has to hear.

The Witness: You will have to explain to me, sir.

Q. How long have you been living at the Half Moon-Hotel? A. On and off, sir.

Q. That helps us a lot. How long have you been living there, how many days, weeks, months, or years,—how long have you been living there? A. About thirteen months, sir.

Q. During those thirteen months have you been taken out of the Half Moon Hotel for exercise? A. Yes, sir.

Q. Where were you taken for exercise? A. In Long Island, sir.

Q. Long Island? A. Yes, sir.

Q. Whereabouts on Long Island? A. Some park—

Mr. Turkus: I object to the identity of the place.

The Court: Objection sustained.

Mr. Talley: Exception.

Mr. Turkus: In the objection I want it clearly understood that all I want—

The Court: I understand. The record may not state your grounds.

Mr. Turkus: I only object—I don't

2686

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care what facts are gone into, but I do object to divulging the specific place where the witnesses were taken.

Mr. Talley: I object to the statement by the District Attorney and ask it be stricken from the record and the jury be instructed to disregard it.

The Court: Objection overruled; motion denied.

2687

Mr. Talley: Exception. I insist I have a right to inquire.

The Court: The jury is instructed that these remarks are addressed to the Court and call for no ruling by the Court.

Mr. Talley: I insist I have a right to inquire as to the details of any place this man says he has been at, whether the District Attorney likes it or not. The responsibility here is on the Court.

2688

Q. Did you ever go to a baseball game since you have been in custody in the Half Moon Hotel? A. Did I ever go? What do you mean, did I ever go?

Q. (The Court) Have you been taken to baseball games? A. No, sir.

Q. Are you sure about that? A. Yes, sir.

Q. Did you ever go to the movies since you have been in custody? A. No, sir.

Q. Did you ever play baseball? A. Yes, sir.

Q. Where did you play baseball? A. On Long Island, sir.

Q. Was that at Heckscher Park?

Mr. Turkus: I object to the location of the place.

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2689

The Court: Objection sustained.

Mr. Talley: Exception.

Q. That is, since you have been in custody you played ball? A. Yes, sir.

Q. You were with detectives who were guarding you? A. Yes, sir.

Q. Anybody else? A. Yes, sir.

Q. With whom else? A. The other witnesses.

Q. How many times did you do that? A. About four times, sir.

2690

Q. Where is Mugsy Cohen now? A. I don't know, sir.

Q. You have not seen him or heard from him in over a year and a half, is that your testimony? A. Since I am over here.

Q. What? A. Since I gave myself up.

Q. You first got into this Rosen case about four o'clock on the Friday afternoon before the killing, didn't you?

Mr. Turkus: I object to the form of the question; that is not my recollection of the testimony.

2691

Mr. Talley: It is not what your recollection is. I am asking him a question. Your recollection has nothing whatever to do with my question.

Mr. Turkus: Judge Talley seems to think that when I am addressing your Honor I am indulging in personalities. My purpose in addressing the Court is to register an objection. The witness has testified to the Rosen killing but has not mentioned he had any knowledge of it at four o'clock on Friday.

2692

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The Court: The Court suggests that when an objection is made there be no discussion between counsel. The Court is prepared to rule promptly on objections. It will save a lot of time if this is kept in mind. The objection is overruled. However, the other question is indefinite. I do not know quite what you mean when you say, "You got into."

2693

Mr. Talley: First got into this case; when he was first told about this case; when he was first told to go out and steal a car, change the plates, and deliver it to some drop. I want to know when that was. And he testified—

The Court: The Court will not indulge in controversy with counsel; I am suggesting to you that you make your question more clear.

Mr. Talley: I am answering your question as to it not being clear.

2694

The Court: I have overruled the objection.

The Witness: There was no Friday afternoon at four o'clock.

Q. When were you first spoken to about stealing this car? A. Saturday, when Louis Capone showed me the route.

Q. Saturday? A. Yes, sir.

Q. When was it you say you were sitting in your automobile when you say Strauss came up to you? A. Four o'clock.

Q. Four o'clock Friday or Saturday? A. Saturday.

Q. Saturday afternoon? A. Yes, sir.

Q. Then you were told to steal the car, is that right? A. No, sir.

Q. No? A. No, sir.

Q. When were you told to steal the car? A. Friday.

Q. Didn't you say a minute ago, "There was no Friday afternoon," that it was Saturday when this thing happened? A. Friday he told me to steal the car.

Q. You now say that Capone told you to steal the car? A. Louis Capone and Harry Strauss.

2696

Q. Didn't you tell us on your direct examination that it was Harry Strauss that told you to steal the car? A. They were all there, sir.

Mr. Rosenthal: I move to strike out the answer.

Mr. Talley: I move to strike out the answer as not responsive.

The Court: Let it stand.

Mr. Talley and Mr. Rosenthal: Exception.

Q. You have told us, haven't you, when you were examined by the District Attorney that you were told to steal this car by a man named Strauss, isn't that the fact? A. Yes, sir.

2697

Q. Now do you tell us that you were told to steal the car by Capone? A. They were all there together.

Q. Is that what you tell us now, that it was Capone that told you to steal the car? A. Harry Strauss told me to steal the car, but they were all together there.

Q. Are we now to understand it was Strauss

2698

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that told you to steal the car? A. Yes, sir, Harry told me to steal the car.

Mr. Turkus: Will you instruct the witness to speak a little louder so everyone can hear his testimony at the end of the jury box?

2699

The Court: The witness testified on direct examination that on that Friday, at Sackman and Livonia, he had a conversation with Strauss; he was sitting in his own car; Strauss got into the car with him; that while waiting in the car with Strauss, along came Weiss, Farvel Cohen, and Capone. I think you will find that is correct, Judge (addressing Mr. Talley).

Mr. Talley: Of course I will find it correct. I want this witness to admit it is correct. He just definitely and deliberately says, "There was no Friday afternoon," that it was Saturday afternoon. Now, your Honor bears out the recollection of the testimony by reading your notes.

2700

The Court: I understood you to be under the impression that Capone is now mentioned for the first time in connection with the incident.

Mr. Talley: He is mentioned for the first time with the direction of stealing the car. Up to now he has said it was Harry Strauss that told him to steal the car.

The Court: I have just read from my notes of the direct testimony in connection with instructions to steal the car: that Capone, according to the direct testimony

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2701

of this witness, was there, in addition to Strauss, Weiss, and Farvel Cohen.

By Mr. Talley:

Q. What were you and Harry Strauss talking about before you say the others came along? A. A general conversation.

Q. It had nothing to do with this proposed killing of Rosen? A. No, sir.

Q. Nothing at all, until they came along? A. Yes, sir.

2702

Q. As soon as they came into sight, then Strauss said to you, "You go steal a car," is that correct? A. After he came back.

Q. After who came back? A. Harry Strauss, Mendy Weiss, Louis Capone, and Farvel Cohen.

Q. After they came back from where? A. I don't know where they walked to.

Q. Did they walk away and leave you alone in the car? A. Yes, sir.

Q. And then they came back? A. Yes, sir.

Q. After how long a time? A. About three-quarters of an hour, I am not sure.

2703

Q. Then Strauss told you to steal a car, is that right? A. When they were all together, sir.

Q. Is that the time that Strauss told you to steal the car? A. Yes, sir, they were together, sir.

Q. You told us that at least four times, but they did not all together scream at you, "Go out and steal a car," did they? A. They were together, sir.

Q. Did they all at the same time tell you to steal a car? A. No, sir.

2704

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Q. Who did tell you to steal a car? A. Harry Strauss, sir.

Q. Is that on Friday or Saturday afternoon? A. On Friday, sir.

Q. Why did you tell me a few minutes ago that there was no Friday in this matter?

Mr. Turkus: I object. That was not the testimony. He was saying there was no Friday at four o'clock, whatever that means.

2705

The Court: I call your attention to the fact that it seems to me to be indefinite here as to when he got into the Rosen case. Apparently the witness understood it the same way. There was no Friday, so far as the testimony is concerned, involving knowledge by him of the killing of Rosen, but simply of stealing the car.

Q. You were told to steal the car on Friday afternoon, weren't you? A. Yes, sir.

2706

Q. When were you told that a murder was to be done in this candy store on Sutter Avenue?

A. When Louis Capone showed me the route.

Q. When was that? A. Saturday, sir.

Q. What were you told about stealing the car on Friday afternoon? A. Just told me to steal the car and get a "drop".

Q. And that you did, Friday? A. Yes, sir.

Q. Did you leave at about four o'clock to go out and steal the car? A. I left when they told me, sir.

Q. Was that around four, between four and five? A. About one o'clock, 1:15 or something.

Q. What happened between 4 o'clock in the

afternoon and 1 or 1:15, so far as they were concerned? A. What happened when?

Q. Between 4 o'clock or thereabouts, when you say that they told you to steal the car—or Strauss told you to, and one o'clock.

Mr. Turkus: I object. That was not the testimony.

The Court: The witness testified under direct that after waiting around, pursuant to instructions, Friday afternoon, for three-quarters of an hour, about, the four returned and Strauss then said, "Steal a car and get a drop," and that after he was told, "Come over tomorrow afternoon at four o'clock on Sackman and Livonia Avenue."

2708

Is that what your question has relation to?

Mr. Talley: Yes, that is my question. It is perfectly simple: what he did between four o'clock on that afternoon of Friday, when he says Strauss told him to steal a car, and when he stole the car and again saw Strauss.

2709

The Witness: I went looking for Mugsy after I got the drop.

Q. Did you see any of these defendants on Friday night? A. No, sir.

Q. You got Mugsy to steal the car about one o'clock in the morning, is that right? A. Yes, sir.

Q. You stood there alongside of the car while you say Mugsy was getting it started? A. Yes, sir.

2710

Sol Bernstein—For People—Loss

Q. Then you drove away in your car and told Mugsy to follow you in the stolen car? A. Yes, sir.

Q. Then you led Mugsy to the garage? A. He followed me.

Q. You led him there; he followed you? A. Yes, sir.

Q. You told him where to put the car? A. Yes, sir.

2711

Q. When you went into this drop you took out the radio, didn't you? A. No, sir.

Q. Who did that? A. Mugsy Cohen.

Q. Were you standing looking at him? A. Yes, sir.

Q. Did you say you did not know how to take a radio out of a car? A. Yes, sir.

Q. In all the cars that you had stolen before that time, you never took a radio out of one? A. No, sir.

Q. The radio was taken out of this car in order to sell the radio, wasn't it, to get something for it? A. Yes, sir.

2712

Q. You did not sell it? A. No, sir.

Q. You threw it into Canarsie Bay? A. Yes, sir.

Q. To destroy it as evidence, to get rid of it? A. Yes, sir.

Q. Now, at what time did you go out of the garage with the radio? A. About a quarter after two.

Q. A quarter after two in the morning? A. I am not sure of the time.

Q. About what time would you say it was, two or three o'clock in the morning? A. I cannot tell you.

Sol Bernstein—For People—Cross

2713

Q. Four o'clock? A. No, not so late as that.

Q. It was between two and four? A. No, sir.

Q. You did not start out until after one? A. I did not have a watch; I cannot tell you.

Q. Haven't you testified you had an appointment with Mugsy for one o'clock? A. No, sir.

Q. Haven't you told us that it was one o'clock when you went out to get the car? A. Yes, sir.

Q. Is that true? A. Yes, sir.

Q. Then you stole the car at one o'clock? And it must have been pretty close to two o'clock when you got it back into the drop and removed the radio, and closed up the garage again? A. I did not clock it.

2714

Q. When you left the garage with the radio taken out of the stolen car in your possession, it must have been pretty close to two o'clock wasn't it? A. I did not have no watch.

Q. It was after one? A. Yes, sir.

Q. And it was before four o'clock, you say? A. Yes, sir.

Q. What is your best estimate of the time you got out of the drop with the stolen radio? A. About two or half past two or a quarter after two.

2715

Q. At what time did you get back to Amboy and Sutter, where you say you had to go?

Mr. Turkus: I object. That is not a proper chronology of this.

Mr. Talley: Must I follow it chronologically?

Mr. Turkus: I have an objection pending before the Court.

The Court: What is the day, Saturday?

Mr. Talley: Yes.

2716

Sol Bernstein—For People—Cross

The Court: Objection overruled.

Mr. Talley: It is now past one o'clock Saturday morning when they stole that car, and I am trying to follow up his activity in connection with this Rosen murder from one o'clock, when he stole the car, Friday night or Saturday morning, up to Sunday morning when Rosen was killed.

The Court: Go ahead.

2717

Q. (Last question repeated by reporter.) A. About 20 minutes or 25 minutes; I am not sure; I did not have no watch; it is not far from Amboy and Sutter.

Q. When did you get the lock, go out and buy the lock for the drop? A. When I rented the garage the woman told me to get a lock.

Q. When was that, Friday afternoon or evening? A. Friday afternoon, sir.

2718

Q. When did you come back to the place where you say you met Strauss and the others after having stolen the car and taken out and given to Mugsy Cohen the radio, what time did you get back? A. To where?

Q. To wherever you went after stealing the car and putting it in the drop. A. I don't know what you mean; I had an appointment four o'clock the next day.

Q. Where did you have the appointment? A. Sackman and Livonia.

Q. That would be four o'clock Saturday? A. Yes, sir.

Q. Were you in their company from four

o'clock Saturday until the killing on Sunday morning? A. No, sir.

Q. You were with them that night, weren't you? A. I don't know what you mean.

Q. Were you with them on Saturday night? A. Yes, sir.

Q. What time did you pick them up on Saturday night? A. 10 to 10:30.

Q. Was it after 10 o'clock? A. I said 10 to 10:30.

Q. And I said, I am asking you, was it after 10 o'clock? A. Yes, sir. 2720

Q. Where did you see them then? A. Sackman and Livonia.

Q. Was Weiss there? A. Yes, sir.

Q. Were you in your car? A. I got out of the car.

Q. Did you have a car there? A. The hot car, yes, sir.

Q. The stolen car? A. Yes, sir.

Q. Sackman and Livonia Streets, is that right? A. Yes, sir.

Q. Was that the time the guns were handed out? A. Yes, sir. 2721

Q. Who brought the package that you say contained the guns? A. I think it was Joe Pilch, I am not sure.

Q. How do you spell that? A. (Spelling) P-i-l-c-h, I think.

Q. You say you are not sure whether it was him or not? A. Yes, sir.

Q. Did you know Joe Pilch before this night? A. Yes, sir.

Q. Have you seen him since that night? A. Since that night?

Q. Yes. A. Yes, sir.

2722

Sol Bernstein—For People—Cross

Q. When did you see him last? A. I seen him in the Brownsville section lots of times.

Q. Have you seen him since you have been in custody? A. No, sir.

Q. Where were you standing when the guns were handed out? A. By the car, sir.

Q. By what? A. By the hot car.

Q. By your car? A. The hot car.

Q. On the sidewalk? A. Yes, sir.

2723

Q. Was everybody out of the car? A. There was nobody in the car.

Q. That is another way of saying that everybody was out of the car, is that right? A. Yes, sir.

Q. Who handed the guns around? A. What do you mean, who handed the guns?

Q. You don't know what that means? A. I don't understand you, sir.

Q. Did anybody give anybody else a gun? A. It was a package, sir.

Q. Was the package opened? A. No, sir.

2724

Q. How did you know there were guns in the package if you did not see it opened? A. Harry Strauss said, "The package of guns, put in the car."

Q. What was done with the package? A. He gave it to me to put in the car.

Q. And did you? A. Yes, sir.

Q. Did you ever see it opened? A. Yes, sir.

Q. Where was it opened? A. In the park.

Q. In this little park you have described? A. Yes, sir.

Q. You went into the park? A. What do you mean, we all went in.

Q. That is exactly what I say. What did you think I meant? A. We were all in the park.

Mr. Turkus: I object to the repartee.

The Court: Objection overruled.

Q. At what time? A. About 11 o'clock.

Q. Did you see the package opened then? A. Yes, sir.

Q. Who passed the guns out? A. I gave the package to Mendy Weiss.

2726

Q. You gave the package to Mendy Weiss?

A. Yes, sir, and Mendy Weiss passed the guns.

Q. Did he open it? A. Yes, sir.

Q. Did he take the guns out? A. Yes, sir.

Q. How many? A. Three.

Q. Did he hand the guns around to two of the others? A. Yes, sir.

Q. He took one himself, you testified to? A. Yes, sir.

Q. You say Ferraco got a gun? A. Yes, sir.

Q. Where did he put it? A. I did not take notice.

2727

Q. Who else did you see get a gun? A. Harry Strauss.

Q. Where did Harry Strauss put his gun? A. I don't know, but he must have put it in his pocket somewhere.

Q. What pocket? A. I cannot tell you that.

Q. Where did Weiss put his gun? A. I cannot tell you that. He must have put it in his pocket.

Q. What pocket?

The Court: (interrupting) We are not

2728

Sol Bernstein—For People—Cross

asking you what you think, but only what you know.

Q. What pocket? A. I cannot tell you that.

Q. His pants pocket? A. I could not tell you that.

Q. His coat pocket? A. Might have been his pants, might have been his coat pocket.

Q. You were standing right alongside of him, weren't you? A. Yes, sir.

2729

Q. As close as that officer is standing behind your chair? A. Yes, sir.

Q. You say you did not see what they did with their guns? A. They put them in their pocket; I don't know which pocket.

Q. Now, did they put it in the right-hand pocket or the left-hand pocket?

Mr. Turkus: I object.

The Court: Sustained.

Mr. Talley: Exception.

2730

Q. Can't you tell us whether they put it in their pants or coat pocket, any of the three of them?

Mr. Turkus: Objected to.

The Court: Sustained as repetitions.

Mr. Talley: Exception.

Q. How were they dressed? A. Just with suits and hats on.

Q. When you say suits, do you mean pants and coat? A. Yes, sir.

Q. That is the way Harry Strauss was

dressed? A. They were all dressed the same way.

Q. Did they have hats or caps on? A. Hats.

Q. Were they soft hats, fedoras? A. Felt hats.

Q. Not derbies? A. No, sir.

Q. What color hat did the defendant Weiss have on? A. I think it was grey.

Q. What kind did Strauss have on? A. I think they all had grey.

Q. All grey, according to your recollection? A. Yes, sir.

2732

Q. Now, did they have their hats and coats on for the remainder of that evening? A. Yes, sir.

Q. You say that Weiss went away from you during part of that Saturday night with one of the others, do you remember that? A. He went alone first.

Q. Did he have his hat and coat on when he went then? A. Yes, sir.

Q. Then the second time he went, did he have his coat on then? A. Yes, sir.

2733

Q. You saw Weiss go alone once, and then Weiss go with somebody else the second time? A. Yes, sir.

Q. You saw him come back alone and you saw him come back with this other person? A. Yes, sir.

Q. Who do you say he went with, Strauss? A. Yes, sir.

Q. When they came back they both had their hats and coats on? A. Yes, sir.

Q. When he came back alone the first time he had his hat and coat on? A. Yes, sir.

2734

Sol Bernstein—For People—Cross

Q. That is Weiss I am speaking about? A. Yes, sir.

Q. Now, you told us that Weiss gave you a slip of paper with an address on, that you were to go to. That was Saturday night, wasn't it? A. Yes, sir, in the morning.

Q. What time in the morning? A. I mean Saturday night.

Q. Now what do you mean? A. Yes, sir, Saturday night.

2735

Q. At what time Saturday night, as long as you know? A. About 11 o'clock or half past 11, something like that.

Q. Did he write the name and address? A. Yes, sir.

Q. What was on that slip of paper? A. There was an address on it.

Q. Was there a name on it? A. No, sir.

Q. Just the address? A. Yes, sir, an apartment number.

Q. Do you remember what the address was? A. No, sir.

2736

Q. Have you got that slip? A. I beg your pardon?

Q. Did you hear what I said?

The Court: Did you keep the slip?

A. They gave it to me, yes, sir.

Q. (The Court) Have you got it now? A. No sir.

Q. What did you do with it? A. I ripped it up.

Q. You say you what? A. Ripped it.

Q. When did you rip it up? A. When I got to the apartment house.

Q. You threw the slips away, the pieces away?
A. Yes, sir.

Q. You have not seen that since? A. Yes, sir.

Q. What? A. I did not see that since.

Q. Did you know whose apartment you were going to? A. No, sir.

Q. When did you find out? A. When I got up to the apartment.

Q. You did not have the name on the slip?
A. No, sir.

2738

Q. How did you know what apartment to go to? A. Because it was written on the paper.

Q. The number of the floor was written on the paper? A. The apartment number.

Q. When you got in there you told us these friends were eating? A. Yes, sir.

Q. And they invited you to have a sandwich?
A. Yes, sir.

Q. You said that was Cohen's house, didn't you? A. Yes, sir.

Q. Farvel Cohen? A. Yes, sir.

Q. Did you know Cohen before that? A. Yes, sir.

2739

Q. Did you know he had a wife and two children? A. I did not know, sir.

Q. Do you know now he has, in 1936? A. I don't understand what you mean.

Q. Did you know in 1936 that he had a wife and two children? A. No, sir.

Q. Did you see his wife or any child in the apartment when you went in that night? A. No, sir.

Q. You did not see anybody except these men you say you saw? A. Yes, sir.

2740

Sol Bernstein—For People—Cross

Q. No woman around there at all? A. No, sir.

Q. No child around there? A. No, sir.

Q. You say that you slept on rugs? A. Yes, sir.

Q. Have you ever been in that apartment since? A. No, sir.

Q. Did you ever see a diagram of that apartment? A. A diagram?

Q. A drawing? A. I seen a picture of it.

2741

Q. You saw a picture of the apartment? A. Yes, sir.

Q. Where was that? A. I pointed it out.

Q. You pointed what out? A. The apartment house.

Q. On this picture? A. Yes, sir, the apartment house, sir.

Q. I am talking about the interior or the living part of the room there inside the building. A. No, sir.

Q. Did you ever see a picture of the rooms you say you were in? A. No, sir.

2742

Q. Did you ever see a diagram or drawing of that apartment you say you were in? A. No, sir.

Q. You got there about what time, 11 o'clock? A. 11 or 11:15, or something like that.

Q. Eleven or 11:15? A. No, sir, it was later than that. I don't know how long it took me to get there, because I had to drop the car and then I took a cab; I don't know how long, I did not have a watch.

Q. What time would you say you got there? A. Maybe half past 12.

Q. And was the defendant Weiss there when you came in? A. Yes, sir.

Q. Did he remain there during all the time you were there? A. Yes, sir.

Q. You went to sleep in a room and you did not go out again after you went in? A. What do you mean?

Q. You went to sleep in a room in which a rug was, on which you say you slept? A. Yes, sir.

Q. You slept there until, you say, five o'clock in the morning? A. About five o'clock.

Q. That would be Sunday morning? A. When Mendy Weiss woke me up.

2744

Q. Mendy Weiss was there and he woke you at five o'clock? A. Yes, sir.

Q. Then you went out to get the car, didn't you? A. They told me to get the car.

Q. The stolen car? A. Yes, sir.

Q. You knew when you went out to get the stolen car at five o'clock on Sunday morning that there was going to me a murder committed, didn't you? A. Yes, sir.

Q. You knew that that car that you had stolen for them and for which you had stolen plates to put on— A. I did not know at first.

2745

Q. You knew when you took that car upon which you had put plates which you had stolen, and from which you had taken the plates that were on it when you and Cohen did steal the car, as you say, was to be used to kill somebody in Rosen's candy store?

Mr. Turkus: I object. That is not the testimony. The time element is bad.

The Court: The time element is not clear. Sustained.

2746

Sol Bernstein—For People—Cross

Mr. Talley: Exception. I will make it clearer.

Q. This car that you were told at five o'clock in the morning to go out and get, was the car that was stolen by you? A. Me and Mugsy, yes, sir.

Q. And this car bore on it at five o'clock on this Sunday afternoon the plates which you had stolen from another car?

2747

Mr. Turkus: I object.

Mr. Talley: Sunday morning, I mean.

Q. (The Court) When you went for the car at five o'clock on Sunday morning you knew it was for a killing, didn't you? A. What is that?

The Court: Repeat the question, Mr. Stenographer.

Q. (Question repeated by the reporter.) A. Yes, sir.

2748

By Mr. Talley:

Q. And on that car were plates you had stolen from another car? A. Yes, sir.

Q. You had broken up the plates that you took from the stolen or original car? A. Yes, sir.

Q. And threw them into the sewer? A. Yes, sir.

Q. You had taken a radio out of this stolen car so as to help you to avoid detection; you did not want to get yourself in trouble or anybody else?

Mr. Turkus: I object. That is not the testimony. The testimony was that was in Canarsie. He said the radio was taken out by Mugsie, who was a radio thief, and he got the radio later from Mugsie.

Mr. Talley: He said it was taken out so nobody would get in trouble.

The Court: He said he got it back. He took it away from Mugsie and destroyed it so nobody would get in trouble.

Q. Why did you take the radio out of the car?

Mr. Turkus: I object unless the time is fixed.

Mr. Talley: You don't dispute the radio was taken out of the car; your own witness says so.

Mr. Turkus: "Taken out of the car" is ambiguous. The radio was taken out of the car several times.

Mr. Talley: Once it was taken out by this witness and Mugsie Cohen. I am sorry I have to go into that, but apparently I must, although it interrupts the line I was on.

Q. Bernstein, when you got the car which you say you and Mugsie stole together, and you led him by driving your car ahead of him into this drop, you and he took the radio out of the car, didn't you? A. Mugsie took the radio out of the car.

Q. You were standing there looking at him, weren't you? You were ready to assist him if

2752

Sol Bernstein—For People—Cross

he needed any assistance? A. What do you mean?

Q. You were ready to help him to get the radio out if he needed any help? A. He did not need any help; he was a good man for it.

Q. You were ready to help him if he needed that help? A. I don't understand you.

Mr. Turkus: Objected to as already answered.

2753

The Court: Objection sustained.

Q. Were you there waiting for him to take the radio out? A. Yes, sir.

Q. How close to him? A. How close to him?

Q. Yes. A. Right from here to here. (indicating)

Q. Indicating about a foot? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Then you drove Mugsy away, he carrying the radio? A. In the car, yes, sir.

Q. In the car. You drove the car? A. Yes, sir.

2754

Q. Mugsy holding the radio? A. He did not hold it; he put it in the car.

Q. You are quite particular now, aren't you? A. It was in the car.

Mr. Turkus: I object to Judge Talley saying to the witness, "You are quite particular now." It is not a question, but it is a sarcastic remark, and the jury should be admonished to disregard it.

The Court: I don't think that calls for a ruling.

Q. Did you have a light on the car when you stole the radio out of it? A. A flashlight, yes, sir.

Q. That flashlight was provided by you? A. Yes, sir.

Q. Did you hold the flashlight while you say Mugsy was taking the radio out of the car? A. Yes, sir.

Q. Was that taken out with a pair of pliers which you brought along? A. Yes, sir.

Q. And also the screw driver which you brought along? Was that also used? A. Yes, sir. 2756

Q. How many rooms were in this apartment you went into, in which you slept on a rug? A. I did not take notice.

Q. What room did you sleep in? A. The living room.

Q. Was it furnished? A. No, sir.

Q. Nothing there but rugs? A. Yes, sir.

Q. No chairs? A. I cannot tell you that.

Q. When you say it was not furnished, you must mean there were not chairs or tables there. A. I did not see— What do you call that again? I don't know what to call that. I did not see any living room suite, just rugs. I don't know if there were any chairs in the corner; I did not take notice. 2757

Q. Were you there from one o'clock in the morning until five? A. Yes, sir.

Q. You ate there and you slept there? A. Yes, sir.

Q. And you cannot tell us whether there were any chairs or tables in the room which you slept in? A. I did not go looking around.

2758

Sol Bernstein—For People—Cross

Q. Where were the other men sleeping? A. I cannot tell you.

Q. Did they sleep on the rug with you? A. I left them in the kitchen.

Q. Did they sleep in the room with you? A. I cannot tell you that, sir.

Q. Did any of them sleep on the rug which you say you slept on? A. I did not see them, sir.

Q. Were you the first to leave the kitchen? A. Yes, sir.

2759

Q. You went out and went and threw yourself on the rug and went to sleep; is that right? A. Not sleep, just laying around.

Q. You did not sleep? A. No, sir.

Q. You knew that these men were in the apartment all that night and they had not left and you did not leave? A. Yes, sir.

Q. Between the time you left them in the kitchen and when you awakened at about five o'clock in the morning? A. Yes, sir.

Q. When you got to the Rosen candy store it was broad daylight, wasn't it? A. Yes, sir.

2760

Q. At what time do you say it was when you got there? A. I could not tell you that, sir.

Q. It was after five o'clock, wasn't it? A. Yes, sir.

Q. Was the store open for business? A. When I pulled over the car it was open.

Q. You pulled over directly in front of the store? A. Yes, sir.

Q. So that these men you say went in, when they came out they could go right into your car by crossing the sidewalk? A. What do you mean by crossing the sidewalk?

Q. Just exactly what I say, crossing the side-

walk, from the entrance of the store to the curb where your car was. A. Yes, sir.

Q. That is all they had to do? A. Yes, sir.

Q. And you were sitting at the wheel of the car? A. Yes, sir, with the motor running.

Q. And with the motor running? A. Yes, sir.

Q. Do you say you did not see Rosen that morning at all? A. No, sir.

Q. This is not a wide sidewalk there, is it?

A. What do you mean by wide sidewalk?

Q. Don't you know what I mean by wide sidewalk? A. Like every street in Brooklyn that I know.

2762

Q. Can you estimate the width of the sidewalk from the front of Rosen's store to the curb? A. I did not have a ruler, I did not measure it.

Q. You did not have a ruler and you did not have a watch; all you had was a pliers and a flashlight and a screwdriver to steal the car and steal the plates with; is that right?

Mr. Turkus: Objected to as argumentative, inducing the witness to engage in repartee and discussion, not seemly in a court-room.

2763

Mr. Talley: This is serious business for me.

Mr. Turkus: Will your Honor direct counsel to address the Court without an incessant barrage from Judge Talley? I have an objection.

Mr. Talley: Has what I said called for comment?

Mr. Turkus: Will you kindly conduct yourself with proper deportment?

2764

Sol Bernstein—For People—Cross

Mr. Talley: Don't tell me anything about proper deportment.

Mr. Turkus: Nobody can tell you anything.

Mr. Talley: Don't dare tell me anything about that. Don't dare tell me how to conduct myself in the courtroom. That is one thing I will not take from you. That is one thing you cannot talk to me about.

2765

The Court: I will have to send for the gavel. The witness has already testified to these matters. The objection is sustained as repetitious.

Mr. Talley: Exception.

Q. When you went down from that apartment, you went out to get the car, didn't you? A. What apartment do you mean?

Q. What apartment do you think I mean? A. You will have to explain me more clearly.

Q. Then I will be clearer.

2766

By the Court:

Q. When you were called up at five o'clock in the morning you went to get the car? A. Yes, sir.

Q. Where did you go? A. Where did I go? I went to get the car and bring it up to the park, where they told me.

By Mr. Talley:

Q. Did you do that? A. Yes, sir.

Q. You brought it over to the little park you spoke of? A. Yes, sir.

Q. Were those men there when you got to the little park? A. Mendy Weiss was there, Harry Strauss was there, and Jimmy Ferraco.

Q. In the park? A. Yes, sir, in the park.

Q. What part of the park? A. The park at Blake and Bradford.

Q. What part of the park? A. I beg your pardon?

Q. What part of the park? A. There was a fence around; I can show it on the picture if you want me to.

Q. Just tell me. A. I cannot tell you, the portion I know.

Q. Was it in the center of the park or at the entrance of the park? A. Where the entrance is you just make a right turn. If you show me a picture I will show you where.

Mr. Talley: You can see the pictures. The District Attorney has quite a string of pictures. He has got a collection.

The Court: Judge Talley wants to see the picture.

Mr. Talley: The District Attorney declines to hand me the picture. His witness has asked me to look at it. When I ask for it this young gentleman declines to hand it to me. What kind of conduct is that in a serious trial?

The Court: In the exhibit which has the corner of the park where this witness previously testified as to the meeting, hand it to Mr. Talley.

Mr. Turkus: There are two pictures.

The Court: Let him see both.

2770

Sol Bernstein—For People—Cross

Mr. Turkus: In addition to that I have a diagram about six feet long. I will bring in the diagram.

Mr. Talley: We did not ask for the diagram.

Mr. Turkus: May the record indicate two photographs have been handed to Judge Talley by the District Attorney? They are not in evidence as yet. And I will ask to have them marked for identification.

2771

(Received and marked People's Exhibits Y and Z for identification.)

By Mr. Talley:

Q. Was it after you met these men in this little park you stood in the hallway of this apartment house? A. Which apartment house?

Q. The apartment house which you have described as all standing in.

2772

The Court: He told you in the lobby.

The Witness: We all were there, yes, sir.

Q. Did you drive them over in the car you were driving, the hot car, as you described it?

A. No, sir.

Q. How did you get to this apartment house?

A. We all walked.

Q. Where did you leave the car? A. Bradford and Blake.

Q. That is where the park is? A. Yes.

Q. How far did you walk from there to get to

this apartment? A. Up to the corner of Sutter Avenue, and the next block is Belmont, and we made a left turn on Belmont to Wyona; on Wyona and Belmont, that is where it was.

Q. How long did you stay in the lobby? A. I didn't have a watch.

Q. You told us that at least five times. We will take your word for that, at least, that you did not have a watch. A. It might have been three-quarters of an hour.

Q. The four of you stood in the hallway? A. Mendy Weiss, Harry Strauss, Jimmy Ferraco, and myself.

Q. Inside of the doorway? A. In the hallway, sir. Right near the door.

Q. What time in the morning would you say that was? A. I don't know how long; five o'clock they called me up. I don't know how long I got there.

Q. You had to go out and get the car? A. Yes, sir.

Q. You had to go up to this little park? A. Yes, sir.

Q. You had to meet those four men? A. I did not clock it; I did not have any watch.

Q. You had to do all those things? A. Yes, sir.

Q. What time do you say it was when you got to this apartment house?

Mr. Turkus: I object. The witness cannot fix the time limit. He has been exhausted.

By the Court:

Q. How much after five was it according to

2776

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your estimate? A. It might have been seven o'clock, I cannot tell you.

Q. (Mr. Talley) Might have been seven? A. What do you mean, in the house?

Q. How long did it take you to get to the lobby and look out? A. From where I walked to?

Q. Yes. A. About ten minutes.

By Mr. Talley:

2777

Q. Was the door open or shut when you were standing in this hallway? A. Shut.

Q. Will you look at the photograph which is marked People's Exhibit 30, and will you tell us exactly where you were standing when you say you were standing in the hallway? A. We were all in the hallway over here, inside (indicating).

Q. With the door shut? A. Yes, sir.

Q. Will you look at the door on that photograph? A. Yes, sir.

Q. That is not a door you can see through, is it? A. Yes, sir.

2778

Q. Is there a glass in that door? A. Yes, sir.

Q. Let me see the photograph again, please. All right, you stood in the hallway with the door shut looking out through the glass that may or may not be there. I think it is there.

Mr. Talley: I have no objection to the jury looking at it, to see if it is.

Q. You stood there for three quarters of an hour? A. Yes, sir.

Q. Did anybody come down from the apart-

ment house while you were standing there? A. No, sir.

Q. Did anybody go up in the apartment house while you were standing there? A. No, sir.

Q. Did anybody pass on the sidewalk while you were standing there? A. I could not tell you that.

Q. Do you mean by that answer you do not remember? A. I do not recollect.

Q. You didn't see any policeman walking along there who saw you four men in the place, did you? A. I don't understand what you mean.

2780

Q. You don't understand? Did a policeman walk along in front of that house while you were standing there that Sunday morning? A. I did not take notice.

Q. Did you see Rosen leave his house while you were standing in the hallway? A. No, sir. I did not even know who Rosen was.

Q. When did you know the identity of Rosen? A. When I picked up the paper on Sunday night.

Q. Not before? A. Yes, sir.

Q. You did not take the trouble to ask Harry Strauss or anybody else who the man was that was going to be killed in the candy store? A. I did not ask questions; I just obeyed them.

2781

Q. You did not care who was being killed, did you? A. It would be more healthier for me.

Q. You did not care who was being killed, did you? A. I could not back down.

Mr. Talley: I move to strike out the answer as not responsive.

Mr. Turkus: I move the answer stand. It is responsive.

2782

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The Court: Motion denied.

Mr. Talley: Exception.

Q. Will you answer my question? You did not care who it was that was being killed that morning, did you?

Mr. Turkus: Objected to as already answered.

2783

The Court: The Court accepted the answer as being an answer to the question.

Mr. Talley: I did not accept it, sir. I take an exception to your Honor. The answer, I contend, is clearly unresponsive and voluntary and not an answer to my question.

By the Court:

Q. We will put it this way: Were you interested in who was going to be killed? A. No, sir. —

2784

Q. Did it make any difference to you who was going to be killed? A. I could not help myself.

Mr. Rosenthal: I move to strike it out.

Q. Yes or no? A. What could I have done.

Q. Was it a matter of interest to you who it was that was to be killed? A. I cannot answer that.

Mr. Rosenthal: I have objected to the answer, which was not responsive to the Court's question, and my motion was to strike out the answer.

The Court: Strike out, "What could I have done?"

Q. Did you look into the store during the shooting? A. No, sir.

Q. Did you look in the store at any time after the others went in? A. Just looked, yes, sir, not into the store.

Q. That is what I want to find out: Did you look in the store at the time? A. I just looked at the store, but I did not look inside.

Q. Not inside? A. No, sir.

2786

By Mr. Talley:

Q. Did you see anybody in the store while you were waiting outside with the car, directly at the door? A. No, sir.

Q. You did not see these men inside the store at all? A. No, sir.

Q. You did not see what they did? A. No, sir.

Q. You heard shots? A. A lot of shots.

Q. When you heard a lot of shots did you look in the direction from which they came? A. Yes, sir.

2787

Q. Did you see anything then? A. Mendy Weiss and Harry Strauss ran out of the store.

Q. Before they ran out of the store did you see anything happen inside the store? A. No, sir.

Q. Was the window of the store open from the street when you got there and parked your car directly in front of the store? A. I did not take notice of the store then.

2788

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Q. Of course, you knew where you were going to park when you went there? A. Yes, sir.

Q. You knew you were going to park directly in front of the candy store, didn't you? A. Yes, sir.

Q. You held back the seat and held the door open for these men to get into the car? A. Yes, sir, after the shooting.

Q. So you knew a lot about this killing, didn't you? A. I did not deny it, sir.

2789

Mr. Turkus: I object to the question. It is ambiguous, argumentative, and repetitions.

The Court: Sustained as ambiguous.

Mr. Talley: Exception.

Q. You stole the car that was used in this murder, didn't you?

Mr. Turkus: Objected to as already answered.

The Court: Sustained as repetitious.

2790

Mr. Talley: Exception.

Q. You stole the plates from another car and put them onto the car which was used in the murder, didn't you?

Mr. Turkus: Objected to as repetitions.

The Court: Sustained as repetitions.

Mr. Talley: Exception.

Q. You were shown the route that you were to take the killers away from the scene of the

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2791

killing, weren't you? A. Yes, sir, by Louis Capone.

Q. Yes, you told us that before, but were you told there was going to be a killing in that store on that morning, I asked you.

Mr. Turkus: Objected to as repetitions and improper in form; that was not the testimony given.

The Court: We have been all over that.

2792

Q. And you drove—after you heard the shots in this store in which you were told there was going to be somebody killed—you drove some men away from the scene of the killing? A. Yes, sir.

Q. Now, under oath, Bernstein, you swore that you did not know what this Rosen killing was all about, didn't you?

Mr. Turkus: Objected to as to form.

The Court: Objection overruled.

2793

A. You want me to answer.

Q. Yes. A. I did not know, sir.

Q. What? A. I did not know.

Q. You did not know what? A. What it was all about.

Q. You knew there was to be a killing, didn't you? A. Yes, sir.

Q. You knew it was to be on a Sunday morning, September 13, 1936, didn't you?

Mr. Tarkus: I object, that is not the testimony; it is repetitious.

The Court: Objection sustained.

2794

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Mr. Talley: Exception. Your Honor heard this witness say he did not know what it was all about. Are you going to prevent me from bringing back to his memory things he did in connection with it and in furtherance of it, which make him an accomplice? Are you going to prevent me from proving that?

The Court: Don't forget yourself.

2795

Mr. Talley: I never do, nor do I overlook, your Honor, the necessity for preserving dignity in this court, but I do want my rights in cross-examination protected by you. You are the only one who can protect them, and I say I am entirely, definitely, and manifestly within my rights when I am asking this principal witness for the People the questions I am now asking.

Mr. Turkus: I object to the summation. He is not here as the People's principal witness.

2796

Mr. Talley: He is your principal witness, and do not attempt to deny it.

Mr. Turkus: You may think so.

The Court: The Court tries to rule fairly, and counsel should rest on their exceptions. I would rather you asked the question and the Court would then rule.

By Mr. Talley:

Q. You say you did not know anything about this killing?

Mr. Turkus: Objected to as repetitious.

The Court: Sustained. He has not said so.

Mr. Talley: Exception. He has testified he does not know anything about this killing. He testified to that within the last five minutes.

The Court: No, he has not.

Mr. Talley: Exception. I did not ask him anything about the Rosen—I asked him about if he had not sworn before a Court and jury he knew nothing about it.

Mr. Turkus: That was not your question.

The Court: I will not indulge in alterations.

By the Court:

Q. Did anybody at or about the time of this occurrence tell you the reason why it was to be done? A. No, sir.

Q. And after the alleged killing did anybody tell you, in the group, tell you the reason why it was done? A. No, sir.

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

By Mr. Talley:

Q. In the case of *People v. Irving Cohen*, in which you testified as a witness for the prosecution, which was tried in the June term of 1940.

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in Monticello, New York, were you asked these questions and did you make these replies:

"Q. You aren't (meaning are not)—You aren't accessory or accomplice to any murder?

A. That is right."

Mr. Turkus: There were other lawyers who tried that case. If that question was asked in this court I would have objected to it as a legal question.

2801

The Court: There is nothing to call for a ruling now. I am not interested in what you would have done if you were there.

Mr. Turkus: I object to the question.

The Court: Sustained. It is a legal point.

Mr. Talley: Exception.

I don't think your Honor understood the situation.

The Court: What is an accessory as defined by Section 2 of the Penal Code?

2802

Mr. Talley: I am asking you to bear with me. If on a certain occasion which I have called his attention to he was asked this question and whether he made a certain reply it matters not whether the question has any significance or sense or legal meaning. I am entitled to know whether he was asked that question and whether he made that answer.

The Court: The Court has said you are not. It has nothing to do with this case.

Mr. Rosenthal: I except.

Mr. Talley: I except.

Q. Were you asked this question and did you make this reply: -I must get this question and answer on the record, if your Honor please.

The Court: Certainly. Otherwise your exception is no good, although in this case no exceptions are needed; the entire record is subject to review without exceptions.

By Mr. Talley:

Q. On the trial in Monticello were you asked these questions and did you make these replies:

"Q. You aren't an accessory or accomplice to any murder? A. That is right.

"Q. And that is true? A. Yes.

"Q. And you have had nothing to do with any murder on any occasion? A. That is right."

Were you asked those questions and did you make those replies on the trial of Irvin Cohen in Monticello, New York?

Mr. Turkus: I object. The additional ground of my objection is there is nothing inconsistent between that and his admission which he has made in this courtroom, that he told the truth about Cohen and that he withheld other information. I will not go into the explanation he made. There is nothing inconsistent in that testimony and the present testimony.

Mr. Talley: I object to this statement. It is a summation. It is not time to sum up to the jury, and it is not the basis of an objection.

2806

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The Court: The last part, that is, the last question and answer, are competent. The rest is ruled out.

Mr. Talley: Exception.

Q. "Q. And you had nothing to do with any murder on any occasion? A. That is right."

Were you asked that question and did you make that reply under oath?

2807

The Court: Yes or no?

A. I can explain about that.

Mr. Talley: I move to strike out the answer.

The Court: Strike it out.

Q. Were you asked that question and did you make that answer? A. If it is in the book, I said it.

Q. It is in the book. A. I said it, but I can explain.

2808

Mr. Talley: I move to strike out all except, "I said it."

Mr. Turkus: He can further explain anything.

The Court: It is stricken out.

Mr. Rosenthal: And I ask the latter part of this last answer be stricken out, about explaining.

The Court: The question of explaining can be attended to at the proper time by examination.

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2809

Mr. Rosenthal: Does your Honor strike it out?

The Court: Strike it out.

Q. In the same trial, when you were under oath, were you asked this question about the Rosen murder:

"Q. Did you have any part in that murder?"

A. I don't know what it was all about."

Were you asked that question and did you make that reply? A. If it is in the book I said it.

2810

Q. It is in the book. A. I said it.

Q. And that testimony was given by you under oath in June, 1940? A. Yes, sir.

Q. That is four years after Rosen was killed, which was in September of 1936? A. Yes, sir.

Mr. Talley: I have no further questions.

Cross-examination by Mr. Rosenthal:

Q. Now, Bernstein, so will understand one another. — A. (interrupting) You can come out with it. Go ahead.

2811

The Court: Just listen to the questions and give direct answers.

Q. If you don't understand the question, you tell me, will you? A. Yes, sir.

Q. You testified that in 1930 you pleaded guilty before Judge Vause in this court? A. I don't remember what year it was, but I pleaded guilty.

2812

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Q. You pleaded guilty to that crime before you ever knew Louis Capone, didn't you? A. Yes, sir.

Q. You pleaded guilty to unlawful entry, didn't you? A. Yes, sir.

Q. But that was not the crime you were charged with, was it? A. No, sir.

Q. You were charged with a felony, weren't you? A. Yes, sir.

2813

Q. And you were permitted by the courtesy of the Court and the District Attorney to take a lesser plea? A. I don't know what you mean.

Q. You don't know what a lesser plea is? A. I took a plea.

Q. Do you know what a lesser plea is? A. A lower plea, yes, sir.

Q. By courtesy of the Court and the District Attorney you were given—

Mr. Turkus: I object.

Mr. Rosenthal: I have not finished my question. Will you please sit down until I do so?

2814

Q. Don't answer it. Mr. Turkus wants to object. And when you see him get on his feet do not answer any question that I ask you—is that clear? A. Yes, sir. Tell me the question.

Q. Is that clear to you? A. Very clear.

Q. By courtesy of the Court and the District Attorney you were permitted to take a plea to a misdemeanor, weren't you?

Mr. Turkus: I object.

The Court: Sustained. He does not

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2815

know whether it was a courtesy or what the reason was.

Q. You did take a plea to a misdemeanor?

Mr. Turkus: Objected to as repetitious.

The Court: That is what he said.

Mr. Rosenthal: I am representing the defendant Capone. I don't care what he said to Mr. Turkus and I don't care what he said to Judge Talley. This is an independent cross-examination conducted on behalf of the defendant I represent. If your Honor intends to restrict it I will change my course of examination and take exception to your Honor's ruling.

2816

The Court: That is entirely uncalled for and done for the obvious purpose of provoking the Court.

Mr. Rosenthal: And to that I respectfully except. I ask for a ruling on the question.

The Court: You have it.

Mr. Rosenthal: Is the objection sustained?

2817

The Court: It is sustained as repetitions. He told you a few moments ago.

Mr. Rosenthal: Exception.

Q. When you were asked by Mr. Turkus regarding this conviction you were asked the question on page 488 of these minutes:

"Q. I suggest to you the date of February 12, 1930, and the crime of unlawful entry. Does that refresh your recollection? A. Yes, sir.

2818

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"Q. Were you convicted of that crime on that day? A. Yes, sir."

Do you remember being asked those questions and giving those answers?

Mr. Turkus: Objected to. There is nothing inconsistent with his testimony.

Mr. Rosenthal: I will show he was not convicted on that date, but he answered you with all alacrity that he was, because you suggested the date.

2819

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Did you say you were convicted on the 13th day of February, or pleaded guilty on the 13th day of February in that case?

Q. (The Court) Do you remember the date? A. No, sir.

Q. Is it not a fact that you pleaded guilty on April 21st in respect to that crime? A. I cannot tell you that.

2820

Q. Now, the second conviction which you testified to, you said that you also took a plea to a misdemeanor; is that right? A. I took two pleas, misdemeanors.

Q. I am talking about the second conviction; we have passed the first one. Is that clear, Bernstein?

Mr. Turkus: Objected to as already answered.

Mr. Rosenthal: I have not spoken about the second conviction.

The Court: He said he pleaded twice to misdemeanors.

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2821

Q. You were not charged with committing a misdemeanor on the second offense, were you?

A. No, sir.

Q. You were accused of a felony, stealing an automobile worth five hundred some odd dollars, weren't you? A. I don't know how much it was worth.

Q. In respect to that crime that you pleaded guilty to, you were accused of grand larceny in the first degree, weren't you?

2822

Mr. Turkus: Objected to as repetitions. He said it was a felony and he pleaded 'o a misdemeanor.

Mr. Rosenthal: I am showing the degree of crime.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

The Court: You can ask him what he did. He is bound by his plea. That constitutes an admission of guilt to the extent of the plea. He cannot be examined as to the nature of the charge, because by the plea he does not admit the full extent of the charge, but you may examine him ad lib as to what he did, in order to ascertain the gravamen and to what extent it affects his credibility, if you think that is important.

2823

Mr. Rosenthal: Thank you. From the standpoint of credibility I think it is very important.

The Court: It probably is. Go ahead.

Q. Now, on the 14th of October, 1933, did you

2824

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steal a Ford Victoria sedan? A. I cannot tell you that, sir.

Q. Well, can you tell us whether or not the subject-matter of the charge that was made against you, that you were permitted to plead to a misdemeanor on, involved the theft of a Ford Victoria sedan automobile stolen in October, 1933? A. I don't know what it was. I took a plea for the car. I don't know the year.

2825

By the Court:

Q. In brief, did you steal a Ford? Is that what you were convicted of? A. I don't know what car it was.

Q. You have forgotten the make? A. Yes, sir.

By Mr. Rosenthal:

Q. Do you remember whether the subject-matter of conviction was theft of an automobile from a garage, a public garage situated at 1479 St. Marks Avenue in this Borough? A. Yes, sir.

2826

Q. Did you, in company with one Moe Cohen and Meyer Halperin, steal an automobile? A. No, sir.

Q. Were you with Meyer Halperin when the automobile was stolen? A. No, sir.

Q. Were you with Moe Cohen when the automobile was stolen?

Mr. Turkus: Objected to.

The Court: Objection overruled.

A. No, sir.

Q. Do you know a Moe Cohen? A. Yes, sir.

Q. Did you know him on the 14th of October, 1933, when you stole that automobile? A. When I got arrested, yes.

Q. Do you know Meyer Halperin? A. Yes, sir.

Q. Did you know him at the time you stole the automobile in October of 1933? A. Yes, sir.

Q. Did you steal that automobile alone, without the assistance of anybody? A. Yes, sir.

Q. So that neither Cohen nor Halperin assisted you in the theft of the automobile; is that correct? A. Yes, sir.

2828

Q. That automobile that you stole was practically a new automobile, wasn't it? A. I do not remember, sir. No, sir, an old car, sir.

Q. Weren't you apprehended in an automobile together with Moe Cohen and Meyer Halperin by Detective William Cassidy of the 69th Precinct, while you were driving the car at Linden Boulevard and Kings Highway? A. Not Detective Cassidy, but Patrolman Cassidy.

Q. You remember he was a patrolman? A. Patrolman Cassidy.

2829

Q. With the exception of the change in words, "Detective" to "Patrolman", are the facts which I just stated to you substantially correct? A. Yes, sir.

Q. Were the other two men in the car with you when you were apprehended by Patrolman Cassidy? A. Yes, sir.

Q. Now, at that time, the Patrolman arrested you together with Halperin and Cohen? A. Yes, sir.

Q. Was the complaint which was made against

2830

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you read to you at the time in the County Court before your plea was entered?

Mr. Turkus: Objected to as incompetent, immaterial, and irrelevant.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

2831

Q. Didn't you first enter a plea of a greater degree of crime before you were permitted to withdraw it and plead to a lesser degree? A. Yes, sir.

Q. So that in respect to the charge which I have now related, in which you took a plea of misdemeanor, you first took a plea of a felony, didn't you, before Judge Martin, in this court? A. Yes, sir.

Q. Now then, in 1933, did you know a man named Herschel Bernstein? A. No, sir—yes, sir.

Q. Now, which is it? A. Yes, sir.

Q. In 1933 did you know a man named Hal Kempner? A. What is his name?

2832

Q. Did you know any Kempner, never mind the first name? A. Yes, sir.

Q. What was the Kempner's first name whom you knew? A. Harold.

Q. In 1933 did you know an Aaron Smith? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Did you know a man named Smith in 1933? A. No, sir.

Q. In 1933, in the month of February, or the 26th of February— A. Excuse me, sir. Did you say a man named Smith?

Q. That is a pretty common name, isn't it? A. I know a man named Smith, yes, sir. When

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you said Aaron Smith—I know I know some body by the name of Smith.

Q. You just remembered that, Bernstein, didn't you? A. I was a little tangled up.

Mr. Turkus: I object to the sarcastic language.

Mr. Rosenthal: There is nothing sarcastic. I just asked him if he remembered.

The Court: Objection overruled.

2834

Q. You just remembered it? A. No, sir, it just slipped, that is all.

Q. Slipped your mind? A. Yes, sir.

Q. Well now, you did know a Smith in 1933, didn't you?

Mr. Turkus: Objected to as repetition.

Mr. Rosenthal: No, it is not.

Q. Did you know an Aaron Smith? A. No, sir.

Q. What is the first name of the Smith you knew? A. Milton Smith.

2835

Q. (The Court) He is a lawyer, isn't he?
A. He was a lawyer, yes, sir.

By the Court:

Q. Bald headed? A. Yes, sir.

Q. Known as Baldy Smith? A. Yes, sir.

By Mr. Rosenthal:

Q. A lawyer with a nickname of Baldy Smith?

2836

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Mr. Rosenthal: Maybe we had better have a recess now.

The Court: Go ahead.

Q. Were you on the 26th of February, 1933, in the company of Herschel Bernstein, Hal Kempner, and a man named Smith, or any one of them, at or about one o'clock in the morning?

Mr. Turkus: What year?

2837

Mr. Rosenthal: February 26, 1933. I would ask that you ask the question after we get an answer.

A. I don't know what you are talking about.

Q. Did you break into a pool room located at 1516 Pitkin Avenue in the Borough of Brooklyn through a skylight and take from a safe therein the sum of \$600, you accompanied by one Bernstein, Kempner, and Smith? A. No, sir.

Q. Milton Smith? A. Aaron Smith.

2838

The Court: Let the record be cleared. That would be unjust to Milton Smith, who has practiced in this court, and he also represented Herschel Bernstein.

Mr. Rosenthal: Your Honor knows more about that than I do. We will make it clear, Aaron Smith.

Q. Did you in February, 1934, know a man named Joseph Gordon? A. No, sir.

Q. You never heard the name of Joseph Gordon before—just think. A. No, sir.

Q. Do you know Al Glass? A. Yes, sir.

Q. That is the man who was your partner, wasn't it? A. Yes, sir, in shylocking.

Q. Shylocking and other things, wasn't he?

A. No, sir.

Q. Just shylocking? A. Yes, sir.

Q. You are sure of that, aren't you? A. Yes, sir.

Q. Was he known by any nickname? A. Cherry.

Q. (Spelling) C-h-e-r-r-y? A. Yes, sir.

Q. Do you know Max Richinski? A. Yes, sir.

2840

Q. Did you know him in 1934? A. Yes, sir.

Q. Did you together with Joseph Gordon, Al Glass, and Max Richinski, on the 24th of February, 1934, take from the possession of one Walter Ellis, a night watchman in a garage at Adams Street, a truck containing 1,014 suits of clothes, which truck belonged to the Howard Clothing Manufacturing Company and the Howard Clothes, Incorporated? A. No, sir.

Q. Do you know anything about that theft? A. No, sir.

Q. You never heard about it until I asked you on the stand? A. Yes, sir.

2841

Q. Is that right? A. Yes, sir.

Q. The first time you ever heard about that is when I asked you on the stand today or when Judge Talley asked you yesterday, is that right? A. Yes, sir.

Q. Is it not a fact that you were arrested and charged with that crime in 1934?

Mr. Turkus: That has gone far enough.

* Mr. Rosenthal: No, it has not. I want to finish the question.

2842

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Mr. Turkus: Will your Honor instruct Mr. Rosenthal, who has been appearing as a lawyer nearly as many years as I have been living, that he should know better than to ask such a question?

The Court: It is obvious at this point that counsel, who knows this to be incompetent, is just trying to get it before the jury. Objection sustained.

2843

Mr. Rosenthal: I respectfully except. This man said he never heard of it until today, and this is to attack his credibility as to whether he did or not, and this jury is entitled to know whether he is telling the truth when he said on this stand that this is the first time he ever heard of that theft.

The Court: All right, Mr. Rosenthal, when the Court is tired of sitting here and presiding, it will turn over the gavel to you. In the meantime take your exception by obeying the ruling.

2844

Mr. Rosenthal: I respectfully except to the Court's ruling.

Q. On the 24th of February or thereabouts, in 1934, did you have three \$1,000 bills concealed in one of your shoes? A. No, sir.

Q. On any day in the year 1934 did you have three \$1,000 bills concealed in your shoes?

Mr. Turkus: I object. What is the difference where he kept his money?

The Court: Objection overruled.

A. No, sir.

Q. At no time, in any year, did you have three \$1,000 bills concealed in your shoe? A. No, sir.

Q. Did you have three \$1,000 bills at any time, in any year, concealed on your person, on any part of your person?

Mr. Turkus: I object. I don't understand what you mean by concealing money on his person. I object to the form of the question as incompetent and immaterial and irrelevant.

2846

The Court: Sustained as irrelevant.

Mr. Turkus: We are trying everything but the case.

The Court: There is nothing illegal about it.

Mr. Rosenthal: Exception.

Q. Did you know Jean Glick? A. Yes, sir.

Q. She was a daughter of Charles Meyer, the man you mentioned yesterday? A. Yes, sir.

Q. Let me ask you this: Were you ever a bond salesman? A. A what?

Q. A bond salesman, b-o-n-d. A. Yes, sir,—what do you mean by a bond salesman?

2847

The Court: Bail bonds?

Q. Any kind of a bond. Did you ever sell any kind of a bond? A. I don't know what you are trying to bring out.

Q. You will find out soon enough, as Mr. Turkus used that expression.

Mr. Turkus: May that be stricken from

2848

Sol Bernstein—For People—Cross

the record and the jury told to disregard it?

The Court: Gentlemen of the jury, please do not discuss the case. Let nobody talk to you about it. Keep your minds open.

The recess will be for lunch until 1:30 o'clock.

First the witness will be taken out.
(The witness leaves the court-room.)

2849

The Court: Now the jury may leave.
(The jury leaves the court-room.)

The Court: Now the defendants are re-manded.

(Whereupon a recess was taken until 1:30 P. M.)

AFTERNOON SESSION. TRIAL RESUMED.

2850

SOL BERNSTEIN, (resumes the stand for further cross-examination):

By Mr. Rosenthal:

Q. Were you ever a salesman, any kind of salesman? A. No, sir.

Q. Were you ever in the real estate business? A. No, sir.

Q. At any time in your life? A. No, sir.

Q. When did you get married? A. 1937.

Q. And you are still married, are you? A. Yes, sir.

Q. Did you ever represent yourself in the bank

to be in the real estate business? A. I can't tell you that, sir.

Q. Did you ever represent yourself to be single when you were married, when you were trying to get money from a bank? A. Might have been. I don't recall.

Q. What is your best recollection? A. Don't recall, sir.

Mr. Rosenthal: I ask that these be marked for identification.

2852

(Papers marked Defendants' Exhibits I, J, K, L and M for identification).

Q. I show you this paper marked Defendants' Exhibit, Capone's exhibit, M for identification, and ask you whether at the bottom of that page is your handwriting and signature (handing exhibit to witness)? A. Yes, sir.

Q. I show you Defendants' Exhibit L for identification, and ask you whether at the bottom of the page is your handwriting and signature (handing exhibit to witness)? A. Yes, sir.

2853

Q. I show you Defendants' Exhibit K for identification, and ask you whether at the bottom of the page is your handwriting and signature (handing exhibit to witness)? A. Yes, sir.

Q. I show you Defendants' Exhibit I for identification, and ask you whether at the bottom of the page is your handwriting and signature, and, in addition thereto, whether or not it is not your handwriting, starting at the top of the page, where it says "Full name" and so forth, "Residence" and so forth. A. Yes, sir.

2854

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Q. I show you Defendants' Exhibit J for identification, and ask you whether on the back of that is not your handwriting and signature? A. That is my handwriting, sir.

Q. And is it your signature also? A. Yes, sir.

Q. Then in the year 1939 were you in the real estate business? A. No, sir.

Q. Did you represent to the Food Dealers Industrial Bank, in order to procure a loan, that you were in the real estate business? A. Yes, sir.

2855

Q. That was not true, was it? A. That is right, sir.

Q. In the year 1938, tenth month, that is October 17th, were you single? A. I beg your pardon. Read that again over.

Q. Were you single in October of 1938? A. Married, sir.

Q. Did you represent to the Food Dealers Industrial Bank that you were single at that time? A. Yes, sir.

Q. That was not true either, was it? A. Yes, sir—no, sir, it was not true, sir.

2856

Q. Did you represent to the Food Dealers Industrial Bank that you were a salesman at that time with a fixed salary of \$100 a week? A. I don't recall that but it is not true, sir.

Q. What is your best recollection? Did you tell them that you were a salesman? A. I did tell them, yes, sir.

Q. Did you tell them that you were earning \$100 a week? A. Yes, sir.

Q. Neither of those things was true? A. That is right, sir.

Q. In the year 1938, the month of May, did you represent to the Food Dealers Industrial Bank

that you were single? A. If it is there I said it, sir.

Q. What is your best recollection? A. I can't recall, sir.

Q. Were you in business in the year 1938, in the month of May? A. Yes, shylocking and book-making and gambling.

Q. It was not true that you were single, was it?

Mr. Turkus: Objected to as already answered.

2858

Mr. Rosenthal: This is on a different application, a different time.

Mr. Turkus: What's the difference? He said he was married in 1937 so he is married up to today.

Q. At the time of making these representations you also signed your name at the bottom of the statement, did you not? A. I don't get you, sir.

Q. At the time of making these representations to the bank, you signed your name at the bottom of these statements, did you not? A. Yes, sir.

2859

Q. Where did you live in 1938? A. 1938?

Q. Yes. A. In Bensonhurst, sir.

Q. Where, what address? A. 60th Street.

Q. What address? A. 2161 60th Street.

Q. How long had you lived there? A. About two years, sir. I am not sure. I lived a lot of places. I am just giving you an idea.

Q. What was the answer? A. I am just giving you an idea.

Q. Let us put it this way. What was the last address that you had in Brooklyn before you went to Miami? A. 99 East 96th Street.

2860

Sol Bernstein—For People—Cross

Q. How long did you live there? A. About a year, sir.

Q. Where did you live prior to then? A. Bensonhurst, sir.

Q. What address? A. 2161 60th Street.

Q. How long did you live there? A. About three years, sir.

Q. And where did you live before that? A. On 71st Street.

Q. In Bensonhurst? A. Yes, sir.

2861 Q. How long did you live there? A. About two years, sir—a year or two years.

Q. That would bring you down to around 1936, is that right? A. I don't understand. I am just telling you where I lived, sir.

Q. Where did you live in the year 1936?

Mr. Turkus: Objected to as already answered.

The Court: Do you remember?

A. I lived in 60th Street; I lived in 62nd Street; I lived near 71st Street.

2862 Q. Where did you live in September, 1936? A. On Bay Parkway, 2161 60th Street. Wait a minute, sir. I don't know if this is 60th Street, or 62nd Street, or 71st Street—around there.

Q. It was any one of three places, is that it? A. I think so.

Q. Don't you recall where you came from when you came from home to meet Muggsy Cohen on the Friday before— A. I think it was 60th Street, sir.

Q. Are you sure of that? A. I am not sure.

Q. It might have been 62nd Street? A. It might have been 62nd Street.

Q. It might have been 71st Street? A. Yes, sir.

Q. In December of 1938 did you represent to the Food Dealers Industrial Bank of 89 Osborne Street, Brooklyn, that you were single? A. If it is on there, I said it, sir.

Q. What is your recollection? Did you tell them? A. If it is on there, I said it.

Q. Have you any recollection, independent of this paper which I hold in my hand and which you see me holding in my hand, as to whether you represented to the bank in December of 1938 that you were single? A. If it is on there I said it. A lot of loans.

2864

Q. Did you always tell them you were single? A. Yes, sir, I think so. I am not sure.

Q. Was there any reason why you hid from the bank the fact that you were married? A. I think I would not have gotten so much of a loan.

Q. What? A. I don't know, sir.

Q. I am asking you for your mind. Was there any reason that you had in your mind to hide from the bank the fact that you were married? A. I don't understand what you mean, sir.

2865

The Court: Did you have any reason for stating you were not married?

The Witness: Yes, I think that is the only way I could get the loan, sir.

The Court: You did that in order to get the loan?

The Witness: Yes, sir.

Q. Were you told by somebody that if you were married the bank would not loan you money?

2866

Sol Bernstein—For People—Cross

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

The Court: That was his reason. He stated that.

Q. Isn't it a fact that this man, Charles Meyers, always endorsed these notes? A. Yes, sir.

2867

Q. Up until a certain time when he refused to endorse, is that right? A. Yes, sir.

Q. And after he refused to endorse these notes, you went to his home, didn't you, to see him? A. No, sir.

Q. You did not go to his home? A. No, sir.

Q. Did you see Charles Meyers—did Meyers live at 171 Herzl Street? A. Yes, sir.

Q. Did his daughter, Jean Glick, live there? A. Yes, sir.

Q. She lived with him? A. Yes, sir.

Q. Did you go to the home of Charles Meyers on July 8, 1939? A. I went a lot of times there, sir.

2868

Q. Prior to July 8, 1939, did Meyers refuse to further endorse your notes for you? A. No, sir.

Q. Do you know what the word "prior" means? A. Before, yes.

Q. He was still endorsing your notes in July of 1939, is that correct? A. I don't recall, sir.

Q. You just said "No, sir," didn't you? A. Yes, sir. You asked me things, I got so many loans I don't remember, sir.

Q. I will ask you the question again. Isn't it a fact that before July of 1939, Charles Meyers refused to endorse any more loans for you or notes for you?

Mr. Turkus: I object to it. It is repetitions, already answered.

The Court: Do you remember one way or the other?

The Witness: I did not ask him, sir.

The Court: About that date?

The Witness: I don't recall the date, sir.

The Court: Do you recall the date when he refused to endorse further loans?

The Witness: Yes, that was over that, I think, \$5,000. loan. I don't know when it was.

The Court: Will you try to figure when that was, if you have any recollection of it?

The Witness: That is the time counsellor Barshay came in. That is with the loan in the bank, the \$5,000. loan.

Q. You mean that Mr. Barshay was an Assistant District Attorney? A. Yes, sir.

Q. Is that what you mean? That was in 1939 wasn't it? A. I think so.

Q. Didn't you go into Meyer's home on one night, around one o'clock in the morning, and there hit his daughter in the eye? A. No, sir.

Q. Were you in any court, particularly, the Tenth District Magistrate's Court in Brooklyn, and did you admit at that time that you had hit his daughter in the eye but said it was an accident? A. No, sir.

Q. Were you in the Tenth District Magistrate's Court? A. Yes, sir.

2872

Sol Bernstein—For People—Cross

Q. In Brooklyn, in — A. Pennsylvania Avenue Court, I can tell you.

Q. What? A. I can tell you, Pennsylvania Avenue Court.

Q. Pennsylvania Avenue Court, when? A. The time you are talking about, sir.

Q. Yes, July, 1939. A. I don't recall the date, sir.

Q. Was the name of Meyer's daughter Jean Glick?

2873

Mr. Turkus: Objected to as repetitions.
The Court: Overruled.

Q. What is your answer? A. Yes.

Q. Did she, in your presence, say that you had accidentally hit her in the eye and that she wanted to withdraw the complaint because it was an accident? A. I don't recall, sir.

Q. What? A. I don't recall it.

2874

Q. When you were first asked regarding your second conviction on this trial by Judge Talley, you recall telling Judge Talley that nobody ordered you to steal that automobile,—when you were first asked,—that was the subject of your first conviction. Do you remember saying that

the second conviction, I should say? Let me withdraw it, so that you understand my question and put it a little more plainly for you. Do you remember Judge Talley examining you about your second conviction which related to a stolen automobile? Do you remember that? A. Yes, sir.

Q. Do you remember him asking you questions about it? A. Yes, sir.

Q. Do you remember, in answer to his ques-

tions, your first stating to him that nobody ordered you to steal that car? Do you remember saying that to him? A. Yes, sir.

Q. Do you remember then saying, "Well, I just thought it over and now I want to correct myself. Somebody ordered me to steal the car." Do you remember saying that? A. I don't recall it, sir.

Q. Do you recall whether or not you did tell Judge Talley that you were ordered to steal that car or not by somebody? The car that I have reference to, sir, is the car which is the subject matter of your second conviction, namely, the Ford Victoria coupe. Do you remember saying that?

2876

Mr. Turkus: I object to it. The testimony adduced by Mr. Rosenthal was that this witness could not remember the type of the car.

Mr. Rosenthal: I will withdraw the type of the car. Let me re-frame the question.

2877

Q. Whatever the type of car it was that you stole from this public garage—you know the car I mean, don't you? A. Yes, sir.

Q. That is the car I am referring to. A. Yes, sir.

Q. That is the one you were arrested on? A. Yes, sir.

Mr. Turkus: Objected to.

Q. That is the one you pleaded guilty on, isn't it? A. Yes, sir.

2878

Sol Bernstein—For People—Cross

Q. In reference to that car, did you first tell Judge Talley that no one ordered you to steal that car? A. No, sir.

Q. You did not say that? A. No, sir.

Q. Were you asked these questions and did you give these answers, in answer to Judge Talley's questions, at page 575 of these minutes:

"Q. Did you steal the car that was the subject of that charge against you? Did you steal that because somebody ordered you to? A. No, sir."

2879

Were you asked that question and did you give that answer? A. Yes, sir.

Q. You just told me that you did not answer the question put by Judge Talley, "No, sir". Didn't you just say that to me a minute ago? A. Yes, sir.

Q. That was, not true, was it?

Mr. Turkus: Your Honor, he has not read all.

2880

Mr. Rosenthal: I am going to read the rest. I have already said to the witness the first answer which he gave, and then he subsequently changed it.

Mr. Turkus: The witness has a right to correct his testimony.

Mr. Rosenthal: We will find out about it, and, as you say, we will progress slowly but surely.

Mr. Turkus: Thank you.

Q. You said a minute ago to me that you never told Judge Talley when you were under cross examination by him that nobody had or-

dered you to steal that car. Did you just say that a minute ago?

Mr. Turkus: Objected to as repetitions.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. Now, which is correct, that you did tell Judge Talley when he asked you whether or not you had stolen this car under orders and said "No"? A. No, not that car.

2882

Mr. Turkus: I have an objection to the question. Will you be patient, please?

Q. Let me ask you this. Let me withdraw the question now and let me put it this way. Did anybody order you to steal the car that was the subject matter of your arrest and conviction? A. No, sir.

Q. That question is plain to you? A. Yes, sir.

Q. You understand the car I am referring to is the car which you stole out of the public garage at 1479 St. Marks Avenue on the 14th day of October, 1933? That is plain to you? A. Yes, sir.

2883

Q. Nobody ordered you to steal that car? A. Yes, sir.

Q. Let us understand one another. It is a fact that nobody did order you to steal that car? A. Yes, sir.

Q. You stole that car of your own volition, on your own hook, without any orders from anybody? A. That is right, sir.

Q. Didn't you on your cross-examination—let me read the question to you—weren't you asked

2884

Sol Bernstein—For People—Cross

these questions by Judge Talley and didn't you give these answers:

"Q. (Page 575) Did you steal the car that was the subject of that charge against you? Did you steal that because somebody ordered you to? A. No, sir.

2885

"Q. So that the two times when you pleaded guilty to crimes they were crimes which were committed by you yourself and not under orders? A. Excuse me, let me get this right, I didn't hear you.

"Q. It is perfectly plain. A. No, sir, that car was stolen under orders.

"Q. Didn't you just, two minutes ago, tell me it was not under orders? A. I refreshed my memory."

Were you asked those questions by Judge Talley and did you give those answers? A. Yes, sir.

Q. They were not true, were they?

2886

Mr. Turkus: Object to the characterization.

A. No, sir.

Q. It is definite, Mr. Bernstein, that two charges that you were arrested on, pleaded guilty to and were convicted for, nobody ordered you to commit either of those two crimes; isn't that true? A. Yes, sir.

Q. How much money did you get out of the Modern Industrial Bank? A. Modern Industrial Bank?

Q. Yes. A. A thousand dollars, sir.

Q. Is that all? A. I don't understand what you mean, sir.

Q. You borrowed, you told Judge Talley, \$50,000., or maybe more, through the endorsement of Charles Meyers in the Food Industrial Bank. Did you not say that?

Mr. Turkus: Objected to. That is not the testimony.

Mr. Rosenthal: I will get you the verbatim testimony.

Mr. Turkus: The testimony was brought out by your Honor that in all the loans were \$50,000. or more.

The Court: Mr. Rosenthal, you don't mean \$50,000. in one loan?

Mr. Rosenthal: I am going to have it explained, Judge. We can only ask one question at a time.

The Court: Do you really mean that?

Mr. Rosenthal: No, I do not mean one loan. I am going to find out from him in how many loans.

Q. It is a fact that you were asked by someone in this court room respecting loans that you made from the Food Dealers Bank, that you borrowed up to \$50,000. or more from them? Isn't that true? A. Not for myself, sir.

Q. Did you say in answer either to Mr. Talley's question or Judge Taylor's question that through the endorsement of Meyers you had borrowed from the Food Dealers Bank up to or upwards of \$50,000.? Did you say that, yes or no? A. Yes, sir.

Q. That was true, was it? A. Yes.

2890

Sol Bernstein—For People—Cross

Q. Covering what period of time did you borrow from the Food Bank, or the Food Dealers Bank, this sum of money? A. I don't recall, sir. I don't mean this bank—

Q. Well, starting, when was the first loan that you made at the Food Dealers Bank?

Mr. Turkus: I object to it as incompetent, irrelevant, immaterial, having nothing to do with the Rosen killing.

2891

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

The Court: It is collateral.

Mr. Rosenthal: I respectfully except.

Q. In addition to borrowing money from the Food Dealers Bank, did you borrow sums of money from the Modern Industrial Bank?

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial, nothing to do with the Rosen killing.

2892

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. Was this a large shylock business you had?
A. No, sir.

Q. About how many customers did you have?

A. Twenty, thirty, forty— I don't know how many.

Q. I do not hear you. A. I do not know how many.

Q. Can you approximate?

Mr. Turkus: I object, unless the time be fixed. The business was conducted over

Sol Bernstein—For People—Cross

2893

a period of year. I suppose customers varied.

The Court: Overruled.

Q. What is your answer? A. Twenty, thirty, forty— I don't know how many there was, sir.

Q. You were very familiar with the shylock business, weren't you?

Mr. Turkus: Objected to, repetitions.

The Court: Overruled.

2894

Q. Weren't you? A. Yes, sir.

Q. What did you do, loan five dollars to somebody and get six back for it? A. Yes, sir.

Q. Within a week? A. I beg your pardon, sir?

Q. That is, you loaned five and got a dollar profit for the week's loan, is that right? A. Yes, sir.

Q. In this shylock business that you conducted—let me withdraw that.

Q. Out in Florida, you said you were a spotter, didn't you? A. Yes, sir.

Q. You mean a strong arm man, don't you? A. Yes, sir.

Q. You were a strong arm man in a gambling place in Florida weren't you? A. Yes, sir.

Q. Did you know, in the conducting of the shylock business, that strong arm methods were used in order to collect from the unfortunates that borrowed money?

2895

Mr. Turkus: Object to the question.

The Court: Overruled.

A. Yes, sir.

2896

Sol Bernstein—For People—Cross

Q. If you did not get back the six dollars within a week, you beat it out of the man, did you?

A. No, sir.

Q. Did you conduct your shylock business different than the other shylocks? A. Yes, sir.

Q. What methods did you use to get back your money if it was not paid by the individual who borrowed it? A. Charged somebody more interest, sir.

2897

Q. I don't get that. A. Charged somebody more interest, sir; different customers, make up on them.

Q. Oh, you just let the loan go and charged an additional amount to the other suckers that borrowed from you, is that it? A. Yes, sir.

2898

Q. Let us get that straight. In other words, instead of beating the person that borrowed from you, you charged the other man two dollars a week instead of one; is that the way? A. Sometimes behind, sir. I did not charge interest on top of interest, if that is what you are trying to bring out. Of course, if a man did not pay, I would threaten him. That is a known fact, sir, I would threaten him, yes.

Q. If a man did not pay, you would threaten him? A. Yes, sir.

Q. By that you mean you would threaten to beat him up? A. Yes, sir.

Q. You just told me, did you not, that you would let the sucker go that had borrowed from you and would charge a different one an additional amount to make up the loss. Didn't you just say that? A. Yes, sir.

Q. So that by that do you mean that if some one other than the man that owed you and did

not pay, borrowed five dollars, you would charge him seven dollars at the end of the week instead of six? Is that what you mean? A. No, sir.

Q. What did you mean that you charged an additional amount to the other man to make up the loss for the man that did not pay? What did you mean by that? A. Sometimes a man takes ten. Let me explain you, sir.

Q. Yes, I am waiting for you to explain. A. Sometimes a man takes ten. If he stays away twelve weeks, sir, I am not going to charge him two dollars every week interest. I make a settlement with him and sometimes if a man can't pay, whether he can afford, a dollar a week, two dollars a week, that is the only way you can get your money out. It is no sense of hitting him like, that's why.

Q. You use only threats? A. Yes, money never got the best of me.

Q. In other words, you would say "I am going to beat your head off if you don't pay"? A. Yes, sir.

Q. But if he did not pay, you did not beat his head off. Is that the way you did? A. Yes, sir.

Q. You are sure, however, that you did use threats? A. Yes, sir.

Q. Did you testify in the mountains that you did not threaten anybody in the Gangi Cohen case? A. I did not say I threatened anybody, sir.

Q. What? A. I did not say I threatened anybody, sir, in the mountains.

Q. You said you did not threaten? A. Yes, sir.

2902

Sol Bernstein—For People—Cross

Q. Now you remember that you did threaten people? A. I am telling the truth about everything in this case.

Q. Now you remember that you did threaten people, didn't you? A. Yes, sir.

Q. So you did not tell the truth in the mountains, did you?

Mr. Turkus: Objected to as repetitions.

2903

The Court: That is what he said.

Q. You were under oath in the mountains, weren't you?

Mr. Turkus: Just a minute, Mr. Rosenthal, if you are going to shout.

Mr. Rosenthal: But you told Judge Taylor he did not speak loud enough. Now you complain I speak too loud.

Mr. Turkus: You are shouting in my ear. I will appreciate it if you step back.

2904

Mr. Rosenthal: I will stand in the rear of the court room if you want. Anything to please you. You won't get me into any argument. If the Judge says "smile" I am going to smile.

Q. You were under oath in the Gangi trial, weren't you? A. Yes, sir.

Q. Swore the same way as you did in this court room, didn't you? A. Yes, sir.

Q. To tell the truth? A. Yes, sir.

Q. A man's life was at stake, wasn't it? A. Yes, sir.

Sol Bernstein—For People—Cross

2905

Q. And you had a jury similar to this, sitting there listening to your story? A. Yes, sir.

Q. And in the court you told the jury, I am telling you the truth? A. About the case.

Q. Did you— A. About the case.

Mr. Turkus: Just a minute, don't shut off the answer.

Mr. Rosenthal: I am not shutting off the answer.

2906

Q. Did you tell that jury that you were telling the truth?

Mr. Turkus: Objected to.

Q. When you testified?

Mr. Turkus: Objected to as already answered.

Mr. Rosenthal: All right, withdrawn. I will give you his exact testimony in a minute.

2907

Q. Did you ever have a bank account? A. Bank account?

Q. Yes, bank account. You know what a bank account is, don't you? A. Yes, I did, sir.

Q. You did have a bank account? A. Yes.

Q. Where? A. Manufacturers Trust Company, sir.

Q. Was there any reason to secrete that fact when you were up in the mountains, that you had a bank account?

Mr. Turkus: I object to the form of the question.

2908

Sol Bernstein—For People—Cross

Mr. Rosenthal: Let me withdraw it and put it this way.

Q. Were you asked this question in the mountains and did you give this answer (page 15, starting on page 14):

"Q. And what money did you use to go there? Was it the loan shark money? A. Yes.

"Q. Did you keep a bank account? A. No, sir.

2909

"Q. Never? A. No, sir."

Were you asked those questions in the mountains and did you give those answers? A. If it is in the book, I said it.

Q. Did anybody tell you to say "If it is in the book, I said it"? A. I myself, sir.

Q. You thought of that yourself, did you? A. What do you mean, I thought of it myself?

Q. Did you think of that expression "If it is in the book, I said it" by yourself or were you told by somebody to say "If it is in the book, I said it"? A. Nobody told me anything.

2910

Q. So you thought of it yourself, did you? Did you think of it yourself? A. I myself, sir.

Q. How did you know there was a book? A. You are reading a book, aren't you, sir?

Q. So that you thought of it when you got on the stand, is that it? A. You are reading a book.

Mr. Furkus: Just a minute.

Mr. Rosenthal: Withdraw and put it this way—

Mr. Furkus: Wait, please.

Mr. Rosenthal: I withdraw it.

Sol Bernstein—For People—Cross

2911

Mr. Turkus: Don't be shouting and withdrawing. Let us be a little friendly with the situation.

Mr. Rosenthal: We are going to be very friendly.

Mr. Turkus: The matter has been answered. He saw him read from the book. I ask the answer stand. Any further answer I object as repetitious.

Mr. Rosenthal: I have no objection to the answer standing.

2912

Q. When was it that you first thought of the expression "If it is in the book it must be so"?

Mr. Turkus: I object to it. It has nothing to do with the Rosen killing.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

The Court: That is just quarreling with the witness.

Q. Did you say in the trial, in the mountains, under oath, in answer to the question, "Do you keep a bank account" contained on page 15, "No, sir."

2913

"Q. Never? A. No, sir."

Mr. Turkus: Objected to. It is repetitious. He has just said so.

The Court: Sustained as repetitious.

Mr. Rosenthal: Respectfully except. He said "If it is in the book it is so."

Q. If you said under oath in the mountains

2914

Sol Bernstein—For People—Cross

that you never had a bank account, that was not the truth, was it? A. Yes, sir.

Q. It was the truth? A. It was not the truth, sir.

Q. You told Judge Talley that since you were confined you have been out playing baseball on Long Island with some detectives; is that right? A. Yes, sir.

2915

Q. Give me the name of the baseball team that you were on. Who were the men that played with you?

Mr. Turkus: I object to it.

Mr. Rosenthal: I submit that I have a right to find out whether he played with men who may or may not appear as witnesses in this trial, which we have no knowledge of at this present time, which we are entitled to know.

2916

Mr. Turkus: I have no objection to the identity of the people who played baseball but I object to part of the question, the preamble, the name of the team.

Mr. Rosenthal: Excuse me. Let me withdraw it then.

Q. Were there nine men playing on one side in the baseball game you were in? A. I don't know how many men. There was plenty of detectives there.

Q. Were there nine men on one side, and nine on the other? A. There might have been twelve men on one side sometimes.

Q. Did you ever play baseball? A. Yes, sir.

Q. I mean were there more than nine playing at one time? A. Yes, sir.

Q. In the lineup? A. Yes, sir.

Q. Nine on each side? A. Yes, sir.

Q. So there would be sometimes twelve on each side? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Tell me the names of the twelve that were on your side? A. Tell you the names?

Q. Yes, the names. A. There was a lot of detectives over there. There was only four witnesses.

2918

Q. Tell me the names of the witnesses that were on your side, playing baseball? A. I don't understand what you mean, sir.

Q. You don't know what I mean?

Mr. Turkus: I object to it. It is ambiguous because he said there were four witnesses playing with detectives so they may not have been on the same side.

A. I didn't play on their sides. I played on the cops' side.

2919

Q. Oh, you played on the cops' side? A. Yes, sir.

Q. And the other witnesses played on the cops' side, too, didn't they? A. Yes, sir.

Q. So you were both playing on the cops' side? A. Yes, sir.

Q. On the cops' side that you were on, what other witnesses were on it? A. Sometimes was another witness and sometimes there was none, sir.

Q. Give me the names of the men that were

2920

Sol Bernstein—For People—Cross

out there playing baseball with you? A. You mean the detectives, sir?

Q. Yes, I will take the detectives first if you want it that way. Give me the names of the detectives?

The Court: We can get quickly to this. Pass on to something else. If you will just tell Mr. Rosenthal the names of the various witnesses who on either side played ball with you at any time since you have been—

2921

The Witness: Mike Sycoff, Abe Reles, Al Tannenbaum.

Q. What were the names of the detectives?

Mr. Turkus: I object to it, incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

The Court: Played baseball with whom?

The Witness: Abe Reles, Mike Sycoff, Al Tannenbaum.

2922

Q. Before you said there were four witnesses that you played baseball with. Who was the fourth? You mentioned Sycoff, Tannenbaum and Reles? A. Myself.

Q. Was Magoon there? A. No, sir.

Q. Was Levine? A. No, sir.

Q. Duley Maffetore? A. No, sir.

Q. Just the four that you mentioned were in this ball game that you had with these detectives? A. Yes, sir.

Q. How often would you go out to these ball games? A. I went out exactly four times, sir.

Q. Covering what period of time did you go out and play ball? A. This was in the summer time, sir.

Q. How did you get to Long Island?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Turkus: That has nothing to do with the Rosen killing.

2924

Mr. Rosenthal: I respectfully except, sir. I believe I have a right to show that these men rode in conveyances and the type of conveyances and where they were taken.

Mr. Turkus: If it is for the purpose of showing a contract—

The Court: I know the purpose.

Mr. Turkus: If it is, I withdraw the objection.

The Court: The Court has ruled and will permit no discussion.

Mr. Rosenthal: I respectfully except.

2925

Q. Did you ever walk on the boardwalk at Long Beach? A. No, sir.

Q. Did you ever walk on any boardwalk since you have been in custody? A. No, sir.

Q. Did you ever go in swimming down in Coney Island or Long Beach? A. No, sir.

Q. You say that you were always under guard? A. Yes, sir.

Q. Did you write any letters while you were under guard? A. No, sir.

2926

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Q. At no time did you write letters or send them out to anybody? A. No, sir.

Q. That is positive, is it? A. Yes, sir.

Q. You had no communication whatsoever with the outside world, is I think your expression? A. Yes, sir.

Q. You never wrote a letter to anybody while you were in custody and gave it to your wife or to any detectives or any person to mail? A. No, sir.

2927

Q. That is right? A. Yes, sir.

Q. Were you permitted to write letters? A. No, sir.

Q. Were you permitted to send out mail? A. No, sir.

Q. Were you ever left alone with your wife at any time so that you could give her a letter? A. No, sir.

Q. At all times there was always a detective there? A. Yes, sir.

2928

Q. At no time did you ever write to anybody while you have been incarcerated, or kept, I should say, in the Half Moon Hotel or any of the hotels that you have been kept in while you were a material witness; is that right?

Mr. Turkus: Objected to as repetitions.

Mr. Rosenthal: I want a definite reply to that.

The Court: Sustained as repetitions.

Mr. Rosenthal: I respectfully except.

Q. You mentioned a man by the name of Muggsy Cohen. Was he a close friend of yours?

A. What do you mean by close friend?

Q. Well, did you pal together? A. Yes, sir.

Q. Go on trips together? A. Yes, sir.

Q. Out or town together? A. Yes, sir.

Q. California? A. No, sir.

Q. What? A. No, sir.

Q. Any state other than New York State? A. I beg your pardon, sir.

Q. Did you go to any other state outside of New York State with Muggsy Cohen? A. Yes, sir.

Q. What state? A. Florida.

Q. When did you go to Florida with Muggsy Cohen? A. When District Attorney O'Dwyer declared war on the mob, I ran to Florida.

Mr. Rosenthal: I ask that the answer be stricken as not responsive.

Mr. Turkus: I ask that it stand.

The Court: Let it stand.

Mr. Turkus: It fixes the time all right.

Mr. Rosenthal: I respectfully except.

Q. Was it in 1940 that you went with Mr. Cohen to Florida? A. Yes, sir.

Q. Who else did you go to Florida with? A. Glass.

Q. Glass is the man you call "Cherry", isn't it? A. Yes, sir.

Q. Did the three of you go together? A. Yes, sir.

Q. How did you go down? A. By car, sir.

Q. Whose car? A. Some friend's of mine, sir.

Q. What is his name? A. Theodore Felcher.

Q. Where does he live? A. He worked for Litvins. I don't know where he lived.

Q. He worked for Litvins? A. Yes, sir.

2932

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Q. Is that the automobile place that you bought the car? A. Yes, sir.

Q. Is he related to you, Litvin? A. No, sir.

Q. You do not know where Felcher lives?

Mr. Turkus: Objected to. It has nothing to do with the Rosen killing.

Mr. Rosenthal: I do not know whether it has or not. There are certain things not brought out here that I intend to bring out.

2933

Mr. Turkus: I have an objection.

The Court: It seems to bring fishing to Florida. Sustained.

Mr. Rosenthal: I don't get the significance of that.

The Court: Think it over.

Mr. Rosenthal: I am thinking, but, Judge, I still don't get the significance.

Q. Did you stop with Cohen en route to Florida? A. Yes, sir.

2934

Q. Where did you stop? A. Commodore Hotel.

Q. While you were on the way to Florida did you stop any place?

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial, having nothing to do with the issue of the murder.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. When you were first asked by Judge Tall y as to whether you used any other names out-

side of your own, you said no, didn't you, on this trial?

Mr. Turkus: I object to it. At that time the question was ambiguous.

Mr. Rosenthal: Was it?

Mr. Turkus: Yes, it was.

Mr. Rosenthal: I will read the minutes.

The Court: Overruled.

Mr. Turkus: Don't do me any favors.

Mr. Rosenthal: I will do you a favor.

Q. What is your answer? A. Repeat that question again, sir.

Q. When you were first asked by Judge Talley whether you ever had used any fictitious name in your life, you said no, didn't you? A. I said yes, sir.

Q. When you were first asked you said— A. I don't know if Talley asked me or Mr. Turkus asked me. I said yes, sir.

Q. Didn't you tell Judge Talley if he tells you, you will answer him? A. Yes, sir.

Q. Now, in the mountains did you have any reason to secrete the fact that you had used a fictitious name in Florida, the name of Jackie Berman? Did you have any reason in the mountains of secreting that fact?

Mr. Turkus: I object to the form of the question.

Mr. Rosenthal: That is preliminary to confronting him with the mountain minutes.

The Court: Overruled.

2938

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Q. What is your answer? A. What is that, sir?

The Court: Read it.

(Question read by reporter.)

A. I think he has got a mistake. I think that is the name I went under in Florida.

2939

Q. I am asking you this. I will make it very plain. In the mountains you were asked whether you had ever used any fictitious names, names other than Bernstein, and you told them that you hadn't. Do you remember that? A. I don't recall, sir.

Q. Well, in the mountains did you have any reason to hide from the jury that was hearing the Cohen case the fact that you had used the name Jackie Berman, in Florida? Did you have any reason to hide that fact?

Mr. Turkus: That is objected to.

2940

Mr. Rosenthal: That is the same question, only put more plainly, that the court overruled.

The Court: Overruled.

Q. Do you understand that question? A. In the mountains, sir?

The Court: Did you have any reason for concealing that when you testified in the Cohen case?

The Witness: I did not want to give no information, sir.

The Court: All right, that is an answer.

Q. The name Jackie Berman was your name, wasn't it? A. Yes, sir.

Q. And when you say you did not want to give out any information, do you mean information about yourself and the aliases that you had used? Is that what you mean? A. Yes, sir.

Q. So that when you told the untruth in the mountains it was because you did not want to give any information to the court or the jury in the Cohen case about your aliases, is that it?

Mr. Turkus: Objected to—

2942

A. Because—

Mr. Turkus: Continue. You started.

The Court: That is what he said.

Mr. Rosenthal: All right, withdrawn.

Q. Who is Louis Glass? A. Al Glass.

Q. He has got a name "Cherry", and he has also got his first name, Louis? A. Yes, sir.

Q. Which is his right first name, Louis or Al? A. Al Glass.

2943

Q. Do you know that he registered with you in the Commodore Hotel as Louis Glass?

Mr. Turkus: Objected to. This has nothing to do with the Rosen killing.

Mr. Rosenthal: This was all brought out on direct in the history of this man by Mr. Turkus.

Mr. Turkus: It was not.

Mr. Rosenthal: Although we objected on the ground that it was proper cross-

2944

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examination. You took him through a tour of the country.

Mr. Turkus: Sure, after Judge O'Dwyer became District Attorney.

Mr. Rosenthal: Yes, 'yes, we have heard that so often now--

Mr. Turkus: You certainly have, Mr. Rosenthal.

Mr. Rosenthal: And you will hear some things, too. You will hear some things, too, Mr. Turkus.

2945

The Court (To officer): Will you get the court's gavel?

Mr. Turkus: All right, I am sorry, Judge. Don't send for the gavel. I have an objection.

The Court: I have not the least recollection of what the question was.

Mr. Turkus: I can understand that.

The Court: Read it again.

(Question read by reporter.)

The Court: Sustained as irrelevant.

2946

Mr. Rosenthal: Exception. So much time has elapsed, if I may, with the permission of the court, recall the fact that Mr. Turkus—

The Court: Don't argue.

Mr. Rosenthal: I am not arguing.

The Court: When the gavel comes, I don't want to use it.

Mr. Rosenthal: I hope you don't have to use it on me. I don't think anybody has yet.

The Court: I intend to keep it right in the drawer.

Q. Was Harry Cohen a partner of yours? A. No, sir.

Q. Was he one of the people from East New York? A. What do you mean, from East New York, sir?

Q. Do you know Harry Cohen? A. That is Muggsy Cohen.

Q. That is Muggsy Cohen? A. Yes, sir.

Q. Did I understand you to say that since you are in jail, or since you have been held as a material witness, no one of Judge O'Dwyer's office has ever confronted you with Muggsy Cohen? A. Yes, sir.

2948

Q. Muggsy Cohen has never been in the District Attorney's office in Kings County here or in the hotel where you were, in your presence, since you are in jail? A. No, sir.

Q. That is positive, is it? A. Positive, sir.

Q. About this man "Cherry" Al Glass—let me withdraw that. Of course, you mentioned to the District Attorney, did you not, that Mugsy Cohen is the man that went with you to steal the car?

2949

Mr. Turkus: Objected to. That is obvious from the record.

The Court: That is what he said.

Mr. Rosenthal: He did not say that he mentioned it to the District Attorney at all. I am asking whether he did, when he was originally arrested. I will re-frame the question.

Q. When you were originally arrested or gave yourself up, did you mention to the District

2950

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Attorney that the man who aided you in stealing this automobile was Muggsy Cohen? A. Yes, sir.

Q. And at that time Muggsy Cohen was in Brooklyn, wasn't he? A. I don't know, sir.

Q. You had seen him only just a little while before you gave yourself up, hadn't you? A. I was away for a while, when I was running.

Q. Wasn't he with you while you were running? A. No, sir.

2951

Q. Wasn't he in Florida with you? Isn't that what you just told me a couple of minutes ago? A. Yes, sir.

Q. Didn't he leave Brooklyn with you to go to Florida? A. Yes, sir.

Q. And that is when you said you were running because District Attorney O'Dwyer had started a war on the mob? A. I was running.

Q. Yes. A. I.

Q. He was running with you, wasn't he? A. I was running.

2952

Q. Was he running with you? A. He went with his own car, sir.

Q. Didn't you tell us a little while ago that you borrowed a car from a man by the name of Felcher whose address you do not know and that you, Muggsy Cohen and Al Glass, otherwise known as Louis Glass, and otherwise known as Cherry, went along with you in Felcher's car?

A. He went in his own car.

Q. Did you tell us a little while ago—

Mr. Turkus: Objected to. It is repetitious. It never happened.

The Court: Overruled.

Q. Did you tell us that a little while ago? A. I got mixed up. I didn't understand you.

Q. You got mixed up? Let us start over again if you are mixed up. You recall my asking you a little while ago about your using the name of Jackie Berman? A. Yes, sir.

Q. And you remember my asking you about Harry Cohen, otherwise Muggsy Cohen, and Louis Glass, otherwise Al Glass, otherwise Cherry, being with you in Florida? A. Yes, sir.

Q. Do you remember my asking you how you got to Florida? A. Yes, sir.

2954

Q. And you remember your saying, "We took an automobile to go to Florida."? A. I didn't understand you then, sir, clear.

Q. Do you remember my asking you whose automobile it was, and you said a man by the name of Felcher who works with Litvin, but you don't know Felcher's address; do you remember saying that? A. Yes, sir.

Q. Not having understood me, Muggsy Cohen did or did not go with you to Florida? Which is it?

2955

Mr. Turkus: I object to it.

Mr. Rosenthal: He said he did not understand me. Now I want to get it straight

Mr. Turkus: This has nothing to do with the Rosen killing. Whether they went in one or two cars to Florida, what difference does it make? I object to it.

The Court: I do not recall that he said that Cohen went in the same car, but I fail to see its relevancy.

2956

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Mr. Rosenthal: The relevancy, sir, is the fact that he has now said on the stand here that Cohen is the man who, in the Rosen murder, stole the car with him, and this man Cohen, he is now saying he knows nothing about, and I am showing that he was in his company continuously up to the time practically that he gave himself up.

2957

Mr. Turkus: What has that got to do with it? How would that even—

Mr. Rosenthal: Don't—

Mr. Turkus: Please— How would that even be binding on the defendants?

Mr. Rosenthal: Leave that to me, Mr. Turkus. Do you want to know? You are not so stupid as you pretend to be.

Mr. Turkus: Thanks for the compliment.

2958

Mr. Rosenthal: Where is Cohen? Why isn't he arrested? Why isn't he in jail? Why isn't he questioned? If you want to know the materiality of it, I will tell it to you very quickly.

The Court: When this is all over, let me know.

Mr. Rosenthal: It is all over now, Judge.

The Court: The witness testified that he went to Florida with Muggsy Cohen and was in Florida with Muggsy Cohen at the Commodore Hotel. Whether or not that is relevant to the issue, I don't know. I cannot say. Whether or not they went in the same car seems to me to be

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2959

quite far afield from the trial of this issue.
Sustained.

Mr. Rosenthal: I respectfully except,
sir.

Q. Did you remain in Florida with Muggsy Cohen? A. Yes, sir.

Q. How long did you remain there? A. About three weeks, sir.

Q. Did you leave Florida with Muggsy Cohen—withdraw.

2960

Q. Did you check in the same room with Muggsy Cohen while you were in Florida? A. Yes, sir.

Q. Did you remain in the same room with him for the three weeks that you were in Florida? A. Yes, sir.

By the Court:

Q. That is a high class hotel, isn't it? A. I don't know. Yes, sir.

Q. On the ocean front? A. It is on Collins Avenue.

2961

Q. Collins Avenue near 23rd? A. No, I think near 15th Street or 16th Street.

Q. Down near Lincoln Road? A. Lincoln Road is rather down, sir. Lincoln Road, I think, starts at 23rd Street.

Q. This was in 1940? A. Yes. All the detectives stopped in the Commodore Hotel, sir.

Q. Wasn't Harry Strauss down there at the time you were there? A. No, sir.

Q. Sure? A. Not at the time, at the Commodore, sir.

Q. Did you meet him there? A. No, sir.

2962

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Q. Did you meet him in Florida? A. Yes, sir.

Q. What hotel was he stopping at? A. The Nassau Hotel.

Q. That is down— A. Across the street, on Collins Avenue.

Q. That is Collins near Lincoln Road? A. What do you mean, sir.

Q. Is that near Lincoln Road? A. That is blocks away, sir.

2963

Q. Is that an oceanfront hotel? A. No, sir. Counsellor Rosenberg stopped in the Nassau Hotel.

Q. You were not asked that. Strike that out. A. That's it. I want to just refresh a little bit.

Q. I am trying to figure the month. Do you remember the month in 1940 you were in Florida? A. Yes, sir.

Q. What month was it? A. About February, sir.

Q. That was the heart of the racing season? A. Yes, sir.

2964

Q. Did Harry Strauss have a woman with him?

Mr. Rosenthal: I object to that as immaterial to this issue, whether he did or did not.

A. That time I was in February, 1940, sir.—

The Court: I withdraw that. I asked that for information only. It does not belong in this trial.

The Witness: He was not there.

Mr. Caff: I move to strike the answer out.

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2965

The Witness: He was not there at that time.

Mr. Turkus: Consented to.

By Mr. Rosenthal:

Q. You and Cohen and Glass were partners, weren't you? A. What do you mean, partners?

Q. Do you know what the word "partners" means? A. What do you mean? Explain it, sir.

Q. Do you know what the word "partners" means? A. Yes, sir.

Q. Were you partners? A. No, sir.

Q. In any line of business? A. Just with Glass, shylocking, sir.

Q. Were you partners with Cohen, too? A. No, sir.

Q. At any time? A. Yes, sir.

Q. You mean no, sir. You don't mean yes, sir. A. What say? I was never partners with him, sir.

Q. Wasn't Dapper Dan Siegel down there when you were there? A. Yes, sir.

Q. That is the man that ran the candy store at Saratoga and Livonia Avenue? A. Yes, sir.

Q. Was he stopping with you? A. Yes, sir, he lived in the same hotel, sir.

Q. Did he go down with you, too? A. I beg pardon, sir?

Q. Did he go down with you, too? A. What do you mean, did he go down with me, sir?

Q. Isn't that a plain question? A. I don't understand you. He was there.

Q. You are now telling us that you had two

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cars going down instead of one, didn't you? A. Yes, sir; Muggsy Cohen had his own car, sir.

Q. Did he go down in either of the two cars?

A. I beg your pardon. I can't understand you, sir.

2969

Mr. Turkus: Did who go down? I don't know whom you are talking about. I object to it. It is incompetent, irrelevant and immaterial, far from the Rosen killing, nothing to do with the issue.

The Court: Sustained as immaterial.

Mr. Rosenthal: I respectfully except, sir. Your Honor has asked whether Strauss was there.

The Court: I withdraw it.

Q. Was there another man there with you by the name of Ali Abramson? A. He was living with Counselor Rosenberg and his brother and a friend of his in the same room.

Q. Whose brother? A. Maanie Rosenberg's brother.

2970

Q. What is his name? A. I don't know his name.

Q. You are sure of that now? A. Positively sure, in the Drake Hotel.

Q. This is in the Drake Hotel? A. In the Drake Hotel.

Q. And you were in the Commodore? A. Yes, sir.

Q. And Strauss was in the Nassau? A. I beg your pardon. At the time Strauss was not there.

Q. Didn't the Judge ask you just a little while ago whether Strauss was there when you were

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2971

there and didn't you say yes, he was stopping at the Nassau? A. I said not at that time. That's what I said.

Mr. Turkus: I object to it. That is just what he said to the Judge.

The Court: He corrected that.

Mr. Rosenthal: Who is to be the witness, Mr. Turkus or the witness?

The Court: The witness corrected that. That is on the record. At the end of that inquiry, he said not at that time.

2972

Mr. Turkus: I object to this. It has nothing to do with the Rosen killing; it is far afield. He was down in Miami and what hotel. What has that got to do with the case we are trying? I object to it.

The Court: It is irrelevant although in some respects interesting.

Mr. Rosenthal: I respectfully except to the Court's remarks. All of this matter was brought out by Mr. Turkus on direct examination.

2973

The Court: The jury will disregard it.

Mr. Rosenthal: Does your Honor mean the jury will disregard your remark or what I have to say?

The Court: The colloquy.

Q. Did you leave Miami with Muggsy Cohen?

A. No, sir.

Q. Did he remain there when you left?

Mr. Turkus: Objected to, incompetent, irrelevant and immaterial.

2974

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Mr. Rosenthal: This is February, 1940, just before he gave himself up. It is on the question of this man's credibility.

Mr. Turkus: It is withdrawn.

The Court: The Court can see nothing bearing on credibility in whether Cohen went home or stayed in Miami Beach.

2975

Mr. Rosenthal: I am not exposing the entire thing at this time, your Honor, and I can only ask one question at a time and I don't intend to permit this witness to know what is in my mind when I am asking the questions.

The Court: That is proper.

Mr. Rosenthal: I have in mind that this witness says that Mr. Cohen was never in the District Attorney's office when he was there.

The Court: Go ahead.

2976

Q. After you left Miami, when did you come back to New York? A. What do you mean, when?

Q. What does the word "when" mean, do you know? A. Coming in February.

The Court: Was it about February?

The Witness: Latter part of February or the early part of March, sir.

Q. Did you remain in New York after you got here, before you surrendered yourself? A. No, I went to see somebody, sir.

Q. Did you go out of town or did you remain in New York, is my question to you? A. I went to see somebody.

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2977

Q. Did you leave town or did you remain in New York? A. When I seen somebody then I left—

Q. Did you leave town is the question. A. When I seen somebody I left.

Mr. Rosenthal: I ask that the answer be stricken as not responsive and this witness directed to answer whether he left town or he did not leave town. It is a simple question.

2978

Mr. Turkus: I object and ask that it stand.

Mr. Rosenthal: I ask it be stricken.

Mr. Turkus: It shows why he left town now. You brought that out.

Mr. Rosenthal: I object to the statement of Mr. Turkus also.

Mr. Turkus: I have the first objection that it stand as an answer. Then we will get rid of the second objection.

The Court: These colloquies give the Court a great time to relax. Let us find out what the question is.

2979

(Pending question read by the reporter.)

The Court: Do you mean before he went to Florida?

Mr. Rosenthal: No, I said after he came back to New York did he then leave town again.

The Court: And before he surrendered?

Mr. Rosenthal: Before he surrendered. The answer to that is yes or not, not voluntary statements such as this witness has been in the habit of giving.

2980

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The Court: Overruled. It is overruled because that is covered by the direct examination; therefore Mr. Rosenthal is entitled to go into it on cross.

Mr. Rosenthal: I move to strike out his answer on the ground it is not responsive.

The Court: Strike it out.

2981

Mr. Rosenthal: I ask your Honor at this time to admonish this witness not to volunteer any information and merely to answer questions, where he can, yes or no or he does not know.

The Court: The witness is so admonished.

Q. Is that clear to you? A. Yes, sir.

Q. Did you leave town; yes or no? A. Yes, sir.

Q. Where did you go when you left town? A. Los Angeles.

2982

Q. When did you leave town? After you returned to New York from Miami, when did you leave town, February, March April or when, what month? A. I think it was in March, sir.

Q. Did you go to Los Angeles alone or were you accompanied by anybody? A. With somebody.

Q. Were you accompanied by Glass? A. No, sir.

Q. What is the name of the person that went to Los Angeles with you? A. Joe Bernstein, sir.

Q. Is that the man known as Herschel Bernstein? A. No, sir.

Q. That is a different Bernstein? A. Yes, sir.

Q. Where does he live? A. Near Flatbush Avenue somewhere.

Q. Was he engaged in business with you in any of your businesses? A. He worked for the mob.

Mr. Rosenthal: I ask that the answer be stricken out, not responsive.

Mr. Turkus: It is responsive.

Mr. Rosenthal: I asked whether he was in any business with him.

2984

Mr. Turkus: That invites the answer what business he was in.

Mr. Rosenthal: I did not ask any such question.

The Court: The witness has previously said he worked for something which he describes as the mob. Now he say that Herschel Bernstein worked for the mob.

Mr. Rosenthal: This is Joe Bernstein, not Herschel Bernstein. I asked whether he was in business with him.

The Court: I thought you said Herschel.

2985

Mr. Rosenthal: No, I asked whether it was the same Bernstein, and he said no, this is a different Bernstein.

Mr. Turkus: What difference is it what Bernstein it is? He was with the mob, he said.

Mr. Rosenthal: I am addressing myself to the Court.

Mr. Turkus: That is all I am doing.

Mr. Rosenthal: I ask that the answer be stricken.

The Court: Denied.

2986

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Mr. Turkus: I ask that it stand.

Mr. Rosenthal: Respectfully except.

Q. When was it that you left to go to Los Angeles? A. I think it was March.

Q. Anybody else go with you except Bernstein?
A. Just Joe Bernstein.

Q. How did you go, by what method? A. By car, sir.

Q. Whose car did you use? A. My car, sir.

2987

Q. When you say your car, do you mean a car that is registered in your name? A. No, sir.

Q. Or registered in somebody else's name? A. No, sir.

Q. "No, sir" what? Registered in your name?
A. Somebody else's name.

Q. What name was the car registered in? A. Al Felcher.

Q. Is that the name of the man that you said owned the car that you went to Florida in also?
A. Yes, sir.

2988

Q. So that when you said you borrowed Felcher's car to go to Florida, you mean you borrowed your own car; is that what you mean?
A. What do you mean, sir?

Mr. Turkus: I object to it. It is incompetent, irrelevant, immaterial.

Mr. Rosenthal: This is on his credibility. A minute ago he said he borrowed a car from a man by the name of Felcher, whose address he did not know, in order to go to Florida. Now he said his car was registered in the name of Felcher.

Mr. Turkus: What has that got to do with the Rosen killing? I object to it.

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2989

The Court: It is too far afield.

Mr. Rosenthal: This is on the question of this witness's own testimony given a couple of minutes ago, on his credibility as to anything.

The Court: The Court has allowed great latitude on collateral impeachment, but there are certain discretions which the Court must at some time exercise; otherwise there will be no end to the case and there will be confusion to the jury.

2990

Mr. Rosenthal: Does your Honor sustain the objection?

The Court: Go ahead.

Mr. Rosenthal: If your Honor sustained it, I will take an exception and go on.

The Court: The stenographer will read.

(The remarks of the Court were read.)

The Court: Sustained.

Mr. Rosenthal: Exception.

2991

Q. How long did you remain in Los Angeles before you came back? A. What do you mean, how long did I remain?

Q. You said you took an automobile in the month of March or the end of February, with a man by the name of Joe Bernstein, left New York and went to Los Angeles. A. I went to San Francisco then. I started going. I don't know what you mean, sir.

Q. How long were you away from New York before you returned to New York? A. I gave myself up, sir. I was running.

2992

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Q. How long a time elapsed between the time you left New York and went to California, and you returned to New York? A. I left in March and I came back in April.

The Court: Will you pardon me just a moment?

By the Court:

2993

Q. Isn't Meyer Bernstein the same person as Herschel Bernstein? A. I knew him as Herschel Bernstein.

Q. But in Long Beach, when he had this conviction and was sent up for a year, he went under the name of Meyer, is that it? A. I can't tell you that, sir.

Q. The reason, in your direct examination yesterday you referred to him throughout as Herschel? A. Yes, sir.

Q. Now Mr. Rosenthal refers to him as Meyer, as though he were a different person.

2994

Mr. Rosenthal: May I respectfully state to the Court that I do not refer to him as Meyer? The complaint which I read from refers to him as Meyer. I do not know the difference.

The Court: The Court does.

Mr. Rosenthal: I don't.

The Court: Pardon me, but there is no more colloquy. Just forget there is anybody else in the room and be just as courteous as if you were talking to me alone in chambers.

Mr. Rosenthal: I always try to.

The Court: Unfortunately not.

By the Court:

Q. When you spoke of Joe Bernstein, do you mean the man who went out with this witness to Long Beach and was there convicted and sent to jail for one year? A. No, sir.

The Court: I am asking Mr. Rosenthal.

Mr. Rosenthal: I did you speak of Joe Bernstein, your Honor; he spoke of Joe Bernstein.

2996

The Court: Whom are you talking about, Herschel, or Joe, or Meyer?

Mr. Rosenthal: I am only mentioning the names that he mentioned. I am not talking about anybody. He has mentioned three names and said one Herschel, one Meyer, and one Joe.

The Court: The Court won't press this because it only tends to confuse the proceedings.

Mr. Rosenthal: I did not use the names; he has used the names of different Bernsteins.

2997

The Court: Don't argue.

By Mr. Rosenthal:

Q. Did you use the name "Herschel Bernstein"?

The Court: Don't answer. Proceed with the next question.

Q. Are the persons, the Bernsteins whom you mentioned to me, the three different first names,

2998

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different people, or are they all the same people, Joe, Meyer and Herschel? Are they all the same person? A. I did not mention Meyer.

Q. You mentioned "Herschel," didn't you?
A. Yes.

Q. And you mentioned Joe as the man that you went to Los Angeles with? A. Yes, sir.

Q. Is that a different man than Herschel?
A. Yes, sir.

2999

Q. On the question of Meyer, do you say you do not know Meyer Bernstein? A. No, sir.

Q. Isn't it a fact that Meyer Bernstein is Herschel Bernstein? A. I didn't know that, sir.

Q. How long had you known Herschel Bernstein, how many years? A. I met him in—

Mr. Turkus: I object to it. This is incompetent, irrelevant, immaterial.

The Court: Mr. Rosenthal, I think I see where the confusion arose. It arose through a coincidence which I cannot amplify on the record in the presence of this jury.

3000

Mr. Rosenthal: I did not want your Honor to in any wise infer—

The Court: It is straightened out in my own mind now.

Mr. Rosenthal: I did not want your Honor to infer there was anything I had done in respect to it.

The Court: I was simply confused and puzzled. I see the point now, but I cannot tell you how it came up.

Mr. Rosenthal: As long as your Honor exonerates me on the proposition.

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3001

The Court: You do not require exoneration, now or at any other time.

Mr. Rosenthal: Thank you.

Q. You returned to New York in the month of April? A. Yes, sir.

Q. How long were you in New York—by that I mean any part of it, including Brooklyn—before you gave yourself up? A. I gave myself up right away, sir.

Q. Did you see Muggsy Cohen before you gave yourself up? A. No, sir.

3002

Q. Did you see Al Glass before you gave yourself up? A. No, sir.

Q. When was the last time before you gave yourself up that you saw Muggsy Cohen? A. Never saw him, sir.

Q. You saw him in Florida, didn't you? A. Yes, sir.

Q. That is the last time you saw him, then, isn't it? A. I don't understand you, sir. That is the time I seen him, that's right, and then I never saw him again, sir.

Q. So the last time you saw him was in Florida in February, is that right?

3003

Mr. Turkus: Objected to, incompetent, irrelevant, immaterial.

The Court: Sustained.

Q. When was the last time you saw Al Glass before you gave yourself up?

Mr. Turkus: Objected to, incompetent, irrelevant, immaterial.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

3004

Sol Bernstein—For People—Cross

Q. Did you tell the District Attorney when you surrendered, either Mr. McDonough or Judge O'Dwyer or Captain Bals or anybody else, that Muggsy Cohen was the man who aided you in the theft of the automobile that was used in the Rosen murder? A. Yes, sir.

Q. Did you tell that to the District Attorney? A. Yes, sir.

3005

Q. Whom did you tell it to and when did you tell it for the first time? A. The time I gave myself up, sir.

Q. That would be in April, 1940? A. Yes, sir.

Q. And whom did you tell it to? A. Captain Bals and District Attorney O'Dwyer, sir.

Q. When you were telling them about it, was there a stenographer there? A. No, sir.

Q. Was anybody present taking down what you were saying? A. No, sir.

Q. Did anybody take it down? A. No, sir.

Q. Were you asked to write out what you were saying? A. No, sir.

3006

Q. So that, in the presence of District Attorney O'Dwyer and Captain Bals, you then stated, in April of 1940, that Muggsy Cohen was the man who aided you—

Mr. Turkus: Objected to as repetitious.

Q. —in stealing the car? I want this plain and understood.

Mr. Turkus: I object to it. It is repetitious.

The Court: Sustained.

Mr. Rosenthal: Exception.

Q. When for the next time did you repeat to anybody— A. I beg your pardon, sir.

Q. When for the next time did you repeat the fact—I have not asked you anything yet—when for the next time did you repeat to anybody the fact that Muggsy Cohen was the man who aided you in stealing the car used in the Rosen murder?

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. Did you ever repeat to any other person the fact that Muggsy Cohen was involved in the theft of this car, while you have been in custody? A. I told the Grand Jury.

Q. That was when? A. A couple of weeks later, sir.

Q. Were you ever asked to put in writing before you went before the Grand Jury the statement as to what you knew about the theft of this car? A. No, sir.

Q. Were you ever asked to put it in writing any place? A. No, sir.

Q. Was ever a stenographer present when you were relating to any person what you knew about the theft of this car? A. In the Grand Jury I seen a stenographer.

Q. With the exception of the Grand Jury, was there ever a stenographer present either when the police questioned you or the District Attorney questioned you or any of his Assistants questioned you? A. No, sir.

Q. Regarding Cherry or Al Glass, have you

3010

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ever seen him in the District Attorney's office or in the Half Moon Hotel?

Mr. Turkus: Objected to.

Q. Since the time you have been arrested?

Mr. Turkus: Objected to.

Q. Or in custody?

3011

Mr. Turkus: Incompetent, irrelevant, immaterial, nothing to do with the Rosen killing.

The Court: Overruled.

Q. What is your answer? A. No, sir.

Q. You have never been confronted with him at any time or place since your arrest?

Mr. Turkus: I object.

Q. Or since you gave yourself up?

3012

Mr. Turkus: That is repetitions now.

Mr. Rosenthal: Before I confine it to a particular place, now I want the general answer as to everything, so he cannot say afterwards that it was confined to a different place and that he saw him some other place.

The Court: What is the question?

(Pending question read by the reporter.)

Mr. Turkus: This is referring to Glass?

Mr. Rosenthal: I first directed his attention to a specific place. Now I want to

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3013

know any time and any place so it cannot be a different place he saw him and that is why he answered in the negative.

Mr. Turkus: It is objected to, incompetent, irrelevant and immaterial, nothing to do with the issue in the case.

The Court: I cannot see it but he can answer.

A. No, sir.

Q. When and where were you born, Bernstein?

3014

A. Brooklyn, sir.

Q. When? A. October 10, 1911.

Q. Can you read and write? A. Can I read and write?

Q. Yes. A. Yes, sir.

Q. When you pleaded guilty the first time, were you asked by the Court whether you could read and write and did you say no?

Mr. Turkus: Objected to, incompetent, irrelevant and immaterial.

Mr. Rosenthal: This is on his credibility. These are all statements made in public places, to courts and to juries, that I am questioning on.

3015

Mr. Turkus: Withdrawn.

The Court: Overruled.

Q. Did you? A. I did not get you, sir.

Q. I will repeat the question. The time that you pleaded guilty in this court before Judge Vause and received a suspended sentence, did you say in answer to the question as to whether you could read and write "No"? A. I don't recall, sir.

3016

Sol Bernstein—For People—Cross

Q. I did not get your answer. A. I don't recall, sir.

Q. The time before your first conviction, sir, you were out of employment? You were not working any more, isn't that right? A. What did you say, sir?

Q. Before you started to burglarize this place that you said you burglarized, you had already lost your job and were in the shylocking business, weren't you? A. I think I was working.

3017

Q. You think you were still working when you committed this burglary? A. What year was this? I don't recall so far back, years like that, sir.

Q. Don't you recall what year? Just try and think. What is your best recollection? A. I think I was working, sir.

3018

Q. But weren't you asked by Judge Talley when he was examining you as to the time of your first conviction and didn't you say it was after you had lost your job or left your job in the leather goods where you had gotten into a great deal of debt due to the fact that you had been gambling and went into the shylock business? Didn't you say that when Judge Talley was questioning you? A. I think that was about the car, sir.

Q. You say you did not say that?

Mr. Turkus: He says he thinks it was about the car.

Mr. Rosenthal: I am asking another question.

Mr. Turkus: Object to it as repetitious and answered. He said he thought he

said at a different time, in reference to the car. Repetitious.

The Court: My recollection may be right and may be wrong but I thought he was uncertain on that examination at one point as to whether he was working at the time of that burglary or not.

The Witness: I think I was working, sir.

The Court: He says now he thinks he was working but a few minutes ago he said he could not remember that far back. Has it any relevancy to the issue, whether he was working or not?

3020

Mr. Rosenthal: Yes, it has, your Honor, in view of a certain statement that he made at the time to the Court when he took his plea. And on the question of his credibility at all times from the time he was eighteen, the question of his credibility, I have a right to bring to this jury.

The Court: You mean when his pedigree was taken?

3021

Mr. Rosenthal: Yes.

The Court: Have you got it there?

Mr. Rosenthal: I have a copy of it, an extract.

The Court: May I see it?

Mr. Rosenthal: Yes, surely. I have not got the original, Judge.

The Court: This is prepared by the clerk's office?

Mr. Rosenthal: Somebody in Mr. Fischbein's office prepared it.

The Court: It goes to a question of memory rather than credibility.

3022

— *Sol Bernstein—For People—Cross*

Mr. Rosenthal: It also goes to the question of credibility if he told an untruth even at that time when he was arraigned.

The Court: According to this, at the time of your conviction, when your pedigree was taken, you gave your occupation as leather goods?

The Witness: That is right.

The Court: Would that refresh your recollection?

3023

The Witness: Yes, I was working.

The Court: I assume you lost your job when you were arrested?

The Witness: No, I went back to work again.

The Court: You remember that?

The Witness: Yes, sir.

The Court: That refreshes your recollection?

The Witness: Yes, sir.

3024

Q. You remember that the leather goods was the last place that you ever worked, is that right? A. Yes.

Q. That you worked as an errand boy before you worked in the leather goods?

Mr. Turkus: Objected to as repetitious.

Mr. Rosenthal: I have not asked a thing about this.

Q. Was your memory just as good in the mountains when you testified then?

Mr. Turkus: Object to it as argumentative.

The Court: Overruled.

Q. Was it? Was your memory just as good in the mountains? What is your answer? Have you given an answer? A. I don't understand what you mean, sir.

Q. Was there anything the matter with your memory when you were testifying under oath in the mountains, in the Cohen trial? A. I was confused, sir.

Q. You were confused? A. Yes.

Q. Were you asked in the mountains in regard to your employment (on page 25) these questions and did you give these answers: "Q. Where did you go to work?"—withdrawn. I will start so that you get the connecting thought.

3026

"Q. What grade did you leave public school? A. Eighth grade.

"Q. How old were you? A. Sixteen or fifteen.

"Q. Go to work? A. That's right.

"Q. Where did you go to work? A. I worked for a leather goods place.

"Q. Right after you left public school? A. Majestic Leather Goods.

"Q. What is their address? A. I don't remember."

3027

A. I will tell you now, sir, if you want to know.

Q. Wait a minute, listen to the question. I will ask you a question when I am finished reading this to you. You just wait.

"Q. Are they in business now? A. I don't know.

"Q. How long did you work for them? A. Two years.

"Q. Give me the name of your employer? A. I think Moskowitz.

"Q. First name? A. I don't remember.

3028

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"Q. What work did you do? A. Cutter.

"Q. What did you cut? A. Leather.

"Q. When you were fifteen years old you went to work as a leather cutter? A. At fifteen or sixteen.

"Q. What was your next job? A. As an errand boy in some hat place.

"Q. Give me the name? A. I don't remember.

"Q. How long did you work? A. A few months."

3029

Q. Do you recall being asked these questions in the mountains regarding your employment from the time you left school and giving those answers? Do you remember? A. If it is in the book, I said it, sir.

Q. Was your memory foggy then when you testified in the mountains? A. Yes, sir.

Q. You were not secreting from the jury the fact that you worked in the Majestic Leather concern after you were an errand boy and telling them that you worked there before you were an errand boy, were you?

3030

Mr. Turkus: I object. The testimony speaks for itself.

Mr. Rosenthal: No, because he has given a motive for his testifying to part of the truth.

Mr. Turkus: All right, withdrawn.

The Court: Wait a minute. I want to find out something.

Mr. Turkus: I don't know what it is all about.

The Court: I don't either and for that reason I do not propose to have--

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3031

Mr. Rosenthal: Let me put it this way—

The Court: Please don't interrupt the Court. I cannot sit here and have objections made and just as the Court is ready to rule, have them withdrawn.

Mr. Turkus: I did not understand what he was driving at. I still don't.

The Court: I do not either. For that reason I consider it remotely. The man, so far as the record reveals, there could be no argument to base for concealing matters of infantile employment long antecedent to the crime.

3032

Mr. Turkus: That is right.

The Court: But possible confusion in narration. I sustain the objection as irrelevant.

Mr. Rosenthal: I respectfully except.

Q. Were you telling the truth in the mountains when you said that the first employment that you got after you left school was with the Majestic Leather Company and you only worked for two years there?

3033

Mr. Turkus: Objected to.

Mr. Rosenthal: This was brought out on direct, if your Honor pleases, by Mr. Turkus.

The Court: The Court should not be involved in argument of counsel on rulings of law. A great deal of preliminary work done when a witness is put on the stand may be irrelevant and have no bearing on the issues at all and that is

3034

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only because the law allows latitude in showing the background of the witness but it does not raise an issue on things that happened years before the alleged crime and have no relation to it whatever.

Mr. Rosenthal: I respectfully except to the Court's statement.

Mr. Talley: May I say a word, if your Honor pleases?

3035

The Court: No. I am giving you the benefit of it although I do not attach any importance to it.

Mr. Rosenthal: I except to the Court's remark as to the importance that he places. The question, as I understand it, is as to what importance a jury will place on it.

The Court: For the purpose of ruling, the Court must depend upon its own judgment. Those issues, as you know, are not submitted to the jury. You go ahead.

3036

Mr. Talley: The Court says "No" so I have subsided, so I will say it later.

Mr. Turkus: I object to this colloquy between the lawyers, in the presence of the jury, advance summations, break up the trial at any cost.

The Court: We are losing a great deal of time which tends to have the jury lose the thread of the narrative and of the cross-examination and confuses the Court and confuses everybody.

Mr. Rosenthal: I respectfully except to the Court's ruling.

The Court: Now will you please stop

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3037

the colloquy and proceed with the cross-examination?

Mr. Rosenthal: I merely took an exception, sir.

The Court: I have been patient with these colloquies.

Mr. Rosenthal: Shall I proceed?

The Court: Yes, I wish you would.

Q. Did you tell the truth in the mountains when you told the jury there that the first job you ever had was in a leather goods factory and you had only worked there two years and subsequently your job was an errand boy for a couple of months and those were the only two jobs you had? Did you tell them the truth then?

3038

Mr. Turkus: I object to it. That is a characterization. He has already answered.

Mr. Rosenthal: The Court just overruled the objection.

Mr. Turkus: I renew it.

The Court: Which is the fact?

3039

The Witness: I worked first in the telegram office. Then I worked in a hat factory. Then I worked in the brief case.

Mr. Rosenthal: I did not get his answer.

The Court: Read it.

(Answer read by the reporter.)

The Witness: Leather goods.

Q. While you were working for this brief case concern, you say you did a lot of gambling; is that right? A. Yes, sir.

3040

Sol Bernstein—For People—Cross

Q. On the horses? A. Horses, shooting crap.

Q. Dice? A. Yes, sir.

Q. While you were doing this gambling, what was your salary a week?

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Rosenthal: Exception. I call the Court's attention—

3041

The Court: No, don't.

Mr. Rosenthal: This is all matter of direct examination brought out by Mr. Turkus.

The Court: Please!

Mr. Rosenthal: I respectfully except to the Court's ruling.

Q. What year was it to your recollection that you left—let me withdraw that.

Did you leave or were you discharged from the place of employment in the Majestic Leather Company?

3042

Mr. Turkus: Objected to. It is incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Rosenthal: I respectfully except, sir.

Q. What year was it that you started in as a shylock? A. After I quit the job, sir.

Q. What year—

The Court: What year, if you recall?

The Witness: I don't recall the year.

3

2

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3043

Q. How old were you when you started in as a shylock? A. Nineteen, twenty, eighteen—I don't know. I can't recall so far back, sir.

Q. Can you tell us approximately how old you were, whether you were eighteen years of age when you became a shylock?

Mr. Turkus: Objected to as just answered, repetitious.

Mr. Rosenthal: He has not answered.

The Court: About how old were you?

3044

The Witness: Nineteen, twenty, eighteen.

Q. How long either before or after your first conviction did you become a shylock? Let us put it that way.

Mr. Turkus: Objected to.

Mr. Rosenthal: If he can fix the date.

Mr. Turkus: Objected to.

By the Court:

3045

Q. Was it after? A. What is that again, sir?

Q. Was it after your conviction for unlawful entry that you became a shylock, or was it before? A. It was after.

Q. How long, counsellor wants to know, if you remember? A. After the stolen car. That's all I remember, not before breaking into the store.

Mr. Rosenthal: I cannot hear a word he is saying.

The Court: Speak out loud.

3046

Sol Bernstein—For People—Cross

Q. You say it was after the stolen car? A. Stolen car or the burglary.

Q. It was after the burglary? A. I think so, sir.

Q. Do you remember precisely how long after? A. A couple of years. I don't know, sir.

Mr. Rosenthal: We cannot hear him.

The Court: A couple of years. He does not know.

3047

By Mr. Rosenthal:

Q. Did he say a couple of years after the burglary? A. I don't recall, sir. I know the judge was Vause and the other judge was Martin.

Q. I am not asking you about the judges. The Judge asked you and I ask you, can you approximate either how long before or how long after your conviction or plea of guilty of petty larceny based on the burglary charge it was that you started in as a shylock?

3048

Mr. Turkus: I object to it. It is incompetent, irrelevant, and immaterial. It is repetitious. He stated his background.

The Court: Sustained.

Mr. Rosenthal: Exception.

Q. Did you become a professional loan shark at the time that you started shylocking? A. Yes, sir.

Q. And when did you become a gambler and bookmaker? A. Gambler and bookmaker? When I was shylocking, at the same time.

Q. You started in the three occupations at one time? A. Yes, but when I was working I was gambling, sir.

Q. I am not asking you about what you were doing when you were working. I am now asking you when did you become a bookmaker?

Mr. Turkus: Objected to as repetitions. He has just responded.

Mr. Rosenthal: His response was irresponsible by saying when he was working he was gambling.

3050

Q. When did you become a bookmaker? A. When I was shylocking.

Mr. Turkus: There is an objection.

The Court: Do you remember what year?

The Witness: I don't remember.

The Court: Do you remember how old you were?

The Witness: Nineteen, twenty—something like that.

3051

The Court: Speak out loud.

The Witness: I think I was nineteen or twenty, sir.

Q. You are thirty years old now, are you? A. Yes, sir.

Q. So that if it was 1920, you were then about nineteen years of age when you became a bookmaker and a shylock, is that right?

Mr. Turkus: I object to it. It is confusing. 1920 is twenty-one years ago.

3052

Sol Bernstein—For People—Cross

The Court: Sustained on the ground he has already answered. He said nineteen or twenty.

Q. Where did you conduct your bookmaking from? A. Amboy and Sutter.

Q. On the street or in some house or on the corner or in a place of business or where? A. In a store, sir.

3053

Q. What store did you conduct your gambling or bookmaking business from? A. Candy store, sir.

Q. What is the name of the candy store? A. At that time the name was Proppers.

Q. Do you know where he is?

Mr. Turkus: Objected to, incompetent, irrelevant, and immaterial.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

3054

Q. In 1932 you say you met Harry Strauss, is that right? A. About 1932 or 1933, sometime like that.

Q. Can you give use your best estimate of when it was that you met Harry Strauss?

Mr. Turkus: Objected to. He has just given it. It is repetitions.

The Court: Sustained as repetitions.

Mr. Rosenthal: He said, "Something like that."

Q. Is that the nearest you can come, 1932 or 1933, something like that?

Sol Bernstein—For People—Cross

3055

Mr. Turkus: Objected to as repetitions.

The Court: Is it?

The Witness: Yes, sir.

Q. So as far as you recall it may have been 1934 that you met Strauss? A. No, sir, I don't think so.

Q. When you were asked by Mr. Turkus as to when you met Strauss—

The Court: He said 1932.

3056

Mr. Rosenthal: I know what he said, Judge. I am just getting the minutes here.

Q. You were asked this question and you gave this answer, didn't you (on page 489):

"Q. I direct your attention to in or about the year of 1932 and ask you whether you made the acquaintance of one Harry Strauss? A. Yes, sir."

Mr. Turkus: "In or about."

3057

Q. Do you remember being asked that question and giving that answer? A. Yes, sir. If it is in the book I said it. I don't know, sir.

Q. I did not hear you. A. If it is in the book, I said it. If you read it in the book, I said it.

Q. You then were asked by Mr. Turkus as to a number of people who visited this Coffee Pot, were you, at which you had met Harry Strauss? Do you remember being asked by Mr. Turkus that? A. Yes, sir.

3058

Sol Bernstein—For People—Cross

Q. On your direct examination? A. Yes, sir.

Q. And you remember mentioning a number of names among which was Buggsy Goldstein? A. Yes, sir.

Q. You knew Buggsy Goldstein at that time, did you? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. You were asked up in the mountains these questions and you gave these answers, didn't you (page 21):

3059

"Q. Do you know Buggsy Goldstein? A. No."

Were you asked that question in the mountains and did you give that answer? A. That is a mistake, sir.

Q. Were you asked that question and did you give that answer in the mountains, yes or no? A. If it is in the book, I said it, but that must be a mistake, sir.

Q. The question which I am asking you is whether or not you recall now having been asked the question under oath in the mountains, "Do you know Buggsy Goldstein?" and whether under oath your answer to that question was, "No"? That is the question that I am asking you.

3060

Mr. Turkus: That is objected to. He has just answered it.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. You say that is a mistake. Do you mean you made a mistake when you testified in the mountains? Is that what you mean? A. No, sir.

Q. Do you mean that the stenographer made a

mistake and put "No" down when you said "Yes", is that what you mean? A. I can't tell you that, sir. That is a mistake, sir.

The Court: How can he say that? Stenographers are human, as every lawyer knows.

Mr. Rosenthal: I except to your Honor's statement.

Q. When you said that there was a mistake, in answer to my question, did you mean to infer that you made the mistake or somebody else made the mistake?

3062

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. Whose mistake was it?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Rosenthal: Exception.

3063

Q. When was it that you say that you met the defendant Capone? A. '32 or 1933, sir.

Q. And where was it that you say that you met Capone for the first time? A. Sackman and Livonia, in the Coffee Pot.

Q. Who introduced you, did you say, to Capone? A. What do you mean? I don't understand what you mean, sir.

Q. You don't know what the word "introduced" means? A. What do you mean, "introduced"?

3064

Sol Bernstein—For People—Cross

Q. Do you know what the word "introduced" means? A. I was first borrowing money over there, sir, from the shylocks.

Q. Do you know what the word "introduced" means? A. Yes, but I can't understand you.

Q. Did anybody introduce you to the defendant Capone at any time? A. Yes, Mike Sycoff, who worked for them, worked for the mob shylocking. He was their shylock.

3065

Mr. Rosenthal: I ask that all but the words, "Mike Sycoff", be stricken as not responsive.

Mr. Turkus: That was invited. He pursued this witness as to what he meant by an introduction and the witness has indicated how he met Capone, through one of the employees, and what the transaction was.

Mr. Rosenthal: Now that you have that speech over, my question was merely did anybody introduce him.

3066

Mr. Turkus: I ask that the answer stand.

Mr. Rosenthal: May I have the question read?

The Court: The latter part of the answer is stricken out as irresponsible. The first part will stand.

Q. You mentioned Mike Sycoff. Is that who you mentioned? A. Yes, sir.

Q. Is he one of the men that are in jail with you, or in the Luna Park Hotel, or Half Moon, or whatever you call it? A. Yes, sir.

Sol Bernstein—For People—Cross

3067

Q. How long has he been down in the Half Moon with you? A. How long?

Q. Yes, how long? Is there anything difficult about that question?

Mr. Turkus: I object to it. It is incompetent, irrelevant, immaterial whether there is anything difficult with his question or not.

The Court: Sustained.

3068

Q. How long has Mike Sycoff been down in the Half Moon Hotel with you? A. He come a month after me, sir.

Q. So he has been there practically a year and a half with you, is that right? A. Yes, sir.

Q. Was he one of the men that played baseball with you out on Long Island?

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Turkus: Four witnesses. His name was given. Repetitious.

3069

The Court: I think it was Judge Talley who asked that.

Mr. Turkus: No, Mr. Rosenthal brought it out himself. He had the four names. This will go on ad infinitum.

The Court: Sustained.

Mr. Rosenthal: I certainly object to Mr. Turkus' continual interjections. Nobody interjected when he led this man all over the map of the United States which he now complains of as immaterial be-

3070

Sgt. Bernstein—For People—Cross

cause I am leading him over the same map.

The Court: Proceed.

Q. Were you in the same suite with him down in the Half Moon? A. What do you mean?

Mr. Turkus: Objected to as already answered. Repetitions.

Mr. Rosenthal: Never asked him about any association that he remembered.

3071

The Court: Why can't we leave out these discussions?

Mr. Rosenthal: If Mr. Turkus does, I will, your Honor.

Mr. Turkus: I have made legal objections, if it please your Honor. I cannot stop him from arguing every point.

Mr. Rosenthal: And we cannot stop you.

3072

The Court: The gavel is in the drawer. I am afraid to trust it on the desk. You must avoid these discussions. Time is being consumed. It means this man has got to come back here tomorrow for another session and the court had hoped to finish today. The court cannot, in an important matter of this kind, and with a witness of such importance, press counsel too much. Please proceed. I don't know what it is all about now, there has been so much discussion.

Mr. Rosenthal: I will repeat the question, your Honor, and withdraw the other to save time and put it in as nearly the same form as I can.

Sol Bernstein—For People—Cross

3073

Q. Were you and Mike Sycoff in the same suite in the Half Moon Hotel for the last year and a half that you and he have been in custody?

The Court: He may answer.

A. Answer that, sir?

The Court: Yes.

The Witness: Yes, sir.

Q. Did you eat together? A. With the detectives.

3074

Q. Did you and he eat at the same table?

Mr. Turkus: Objected to as repetitious.

The Court: It makes no difference whether it was a table or they were standing up.

Mr. Rosenthal: Wherever it was. I did not use the word "table" before.

Mr. Turkus: He said they ate together with detectives. It is repetitious.

3075

Q. Did you sleep in the same room? A. No, sir.

Q. How far was his room removed from yours? A. What do you mean? I don't understand what you mean.

By the Court:

Q. How far was his room from yours? A. The other side of the building, sir.

Q. The other side of the building? A. Yes.

Q. The other end of the hotel? A. Yes, sir.

3076

Sol Bernstein—For People—Cross

a big suite and on the other side. I am away from all of them, sir.

Q. How many hours a day were you in his company? A. I don't understand you, sir.

Q. How long each day would you be with him? A. I go to sleep nine o'clock, sir.

Q. When you are awake, how long are you with Sycoff? A. About thirteen hours, sir.

Q. That is daily routine? A. Yes, sir.

3077 By Mr. Rosenthal:

Q. This man Tannenbaum, he was the other man that you mentioned as playing baseball, Al Tannenbaum? A. Yes, sir.

Q. Do you eat with him? A. Yes, sir, with the detectives, sir.

Q. How many hours a day with him? A. Same time, sir.

Q. Do you sleep in the same room with him? A. No, sir.

3078

Q. Who sleeps in the room with you? A. Nobody, sir, except the detectives guarding me, sir.

Q. You and the detectives sleep in one room?

A. They don't sleep there. They guard me. They stay up. They sit next to me.

Q. They sit next to your bed while you are sleeping, is that it? A. Yes, sir.

Q. Are there any other People's witnesses that are together there with you— A. I do not understand, sir.

Q. Wait until I finish the question and maybe you will—outside of Sycoff and Tannenbaum, are there any other witnesses who are in this

room with you for thirteen hours a day? A. Abe Reles.

Q. Anybody else? A. That's all, sir, and the detectives.

Q. Reles, you, Tannenbaum and Sycoff, is that right? A. Yes, sir.

Q. Was Mike Sycoff in business with you at any time, working for you any time? A. Working for me?

Q. I am asking you the question, did he ever work for you. That is plain, isn't it? A. No, sir.

3080

Mr. Turkus: What is the answer? "Is it plain? No, sir." Or he didn't work for him?

Mr. Rosenthal: You ask him. I will ask him for you, if you want me to.

Mr. Turkus: I think he told you who Sycoff worked for.

Mr. Rosenthal: Judge, you do not hear the side remarks and you object when I make statements. It is like a continuous barrage from Mr. Turkus every time the witness says something.

3081

Mr. Turkus: That is not true. You have something now, but not a continuous barrage.

The Court: Please, both sides go according to Hoyle.

Q. Did you know Reles very well? A. I knew him since—No, not so well, sir, but I knew him, sir.

Q. Weren't you asked in the mountains, under

3082

Sol Bernstein—For People—Cross

oath, this question (on page 21) and didn't you give this answer:

"Q. You knew Abie Reles very well? A. Yes."

Were you asked that question and did you give that answer? A. He asked me how many years. I told him, sir.

Q. Were you asked in the mountains that question and did you give that answer? A. If it is in the book, I said it.

3083

Q. If it is in the book, it is so; is that your answer? A. Yes.

Q. It is in the book. Is that so? A. You ask me how many years and I tell you, sir.

Q. It is in the book.

Mr. Turkus: I object.

A. I know, but I never bothered with him, sir. That is what I am trying to bring out.

Q. It is in the book that you said you knew Abie Reles very well. Is that so? A. You ask me how many years.

3084

Q. Will you please answer the question, if you can, and if you cannot understand it, say so. It is in the book. I will repeat the question. It is in the book. A. And I said it.

Q. Wait, you do not know what I am going to ask you. It is in the book that you said you knew Abie Reles very well. Being in the book, is it so? A. Yes, sir.

Q. Did you ever have anything to do with Abie Reles at any time? A. What do you mean, sir?

Q. You. A. What do you mean?

Q. Did you ever hang out with Abie Reles?

A. What do you mean, hang out?

By the Court:

Q. How long have you known him? A. I know him, I think, since '37, sir, the early part of '37, but I seen him around before that.

Q. How many years have you been seeing him? A. Since the time I used to come around to the corner to borrow money.

Q. Was he one of the people that you used to see at the corners? A. Yes, sir, but I never spoke to him until 1937.

Q. In 1937 you became personally acquainted with him? A. Yes, sir.

Q. Before that you knew him by sight? A. Yes, sir.

By Mr. Rosenthal:

Q. Did you know him as "Kid Twist"? A. Yes, sir.

Q. Did you know him by any other names?

Mr. Turkus: Objected to. It is incompetent, irrelevant, immaterial.

Mr. Rosenthal: It may become very competent.

The Court: Overruled.

Q. Did you know him by any other names besides Kid Twist? A. That's all I know of.

Q. Did you know him by the name of Glick or Gliss? A. No, sir.

3088

Sol Bernstein—For People—Cross

Q. You knew him before he went to jail in '34, didn't you? A. No, sir.

Q. Had you ever seen Abie Reles before 1934?

Mr. Turkus: Objected to as repetitious.

Mr. Rosenthal: That has not been asked by me.

Mr. Turkus: He has answered the Court that he saw him around before that.

3089

Mr. Rosenthal: I cannot hear his answers when he turns his face to the Court. I am sorry, and I do not want to have it continuously repeated. He drops his voice every time he speaks to your Honor.

The Court: Objection sustained.

Mr. Rosenthal: I respectfully except. May I have read, then, whatever he said to your Honor? I did not hear it, I confess.

The Court: He not only said it audibly, but the Court repeated it audibly. The Court's questions were audible; his answers were audible.

3090

Mr. Talley: Judge, we could not hear down here either the questions or answers.

Mr. Rosenthal: I could not hear them.

The Court: As I recollect, he knew him by sight, contact, up to about '37, did you say, or '38?

The Witness: '37.

The Court: Beginning with 1937 he did business with him, knew him.

Sol Bernstein—For People—Cross

3091

Mr. Rosenthal: I did not hear anything about that, Judge.

The Court: He may not have said "did business," but he knew him personally.

Q. Did you know him before 1932? A. No, sir.

Q. Did you know him in 1932?

Mr. Turkus: Objected to as repetitious.

The Court: Did you know him by sight in 1932?

3092

The Witness: No, sir.

Q. Did you know him by sight in 1933? A. I don't think so.

Q. Did you ever see him at this Coffee Pot that you spoke about? A. Yes, sir, lots of times, sir.

Q. You did not mention his name when you were asked, as one of the men that you saw at the Coffee Pot— Withdrawn.

Q. When you were asked by Mr. Turkus as to the names of people that you had seen at the Coffee Pot, you did not mention Abie Reles as one of them, did you? Yes or no. A. No.

3093

Q. You had seen Abie Reles often at the Coffee Pot before the time that he went to jail, hadn't you? Yes or no.

Mr. Turkus: Objected to as repetitious. He just answered it.

Mr. Rosenthal: He just admits that he saw him there, but he did not say how often. I am pursuing the question further.

Mr. Turkus: It is objected to as repe-

3094

Sol Bernstein—For People—Cross

titious, no time limit fixed, incompetent, irrelevant, immaterial and nothing to do with the Rosen case.

The Court: I will sustain it as to form.

Q. Did you see Abie Reles many times at the Coffee Pot prior to 1936; yes or no? A. What do you mean, "prior to 1936?" I seen him about '33, I think. I think it was '33, not '34.

3095

Q. Didn't you tell me before, when I asked you whether you knew what the word "prior" meant, that "prior" meant "before?" A. You are mixing me up with the years. I think it was 1933.

Q. Before I asked you whether you had seen him in '33, and you said no, didn't you?

Mr. Turkus: Objected to as repetitious.

The Court: Sustained.

Mr. Rosenthal: Exception.

3096

Q. Was it '33 that you saw Abie Reles in the Coffee Pot? A. Yes, sir.

Mr. Turkus: Your Honor, there are little side remarks going on between counsel for Buchalter and counsel for Capone.

Mr. Wegman: That is not so. Not a single remark has been made. I laughed at Mr. Turkus because he objected to something as repetitious where the witness contradicted himself. I could not restrain my laughter. I apologize for it.

Mr. Turkus: At the Court's ruling which sustained the objection.

Mr. Rosenthal: And what happened

Soi Bernstein—For People—Cross

3097

was Mr. Turkus usurped the Court's rights and wanted to admonish him and that is the only part I took in it, that he should not take the Court's duties upon himself. He has got enough to do to be an Assistant District Attorney. (To Mr. Turkus) Yes, and you will find it so before you are finished with the case.

The Court: It is now ten minutes of four. If things like this happened in school among children, they would be kept in after school.

3098

Mr. Rosenthal: Fortunately, we have grown up, Judge.

The Court: Please proceed with the trial.

Mr. Rosenthal: May I have the question read?

(Question and answer read by the reporter).

Q. How often did you see him in the Coffee Pot in 1933?

3099

Mr. Turkus: Objected to, incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. How often did you go to the Coffee Pot in 1933?

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Rosenthal: Respectfully except.

3100

Sol Bernstein—For People's Cross

This goes to the question of his alleged acquaintanceship with the defendant Capone, sir, and is absolutely material to the issue here.

The Court: How? Will you tell me how?

3101

Mr. Rosenthal: Yes, sir. He says that he met this defendant at that particular place and has been permitted on direct examination to describe an alleged association with him. That is direct examination by Mr. Turkus. I will accept the Court's ruling if I am precluded from showing anything that happened—

The Court: I am asking you the question.

Mr. Rosenthal: I have already answered the question, your Honor.

3102

The Court: The Court cannot think when it is confused by all this bickering. I don't recall that Reles was mixed up in the People's case, I mean People's examination of this witness, with this crime. I am utterly at a loss to know what difference it makes how many times he met Reles in the Coffee Pot several years before the crime. You say it has a bearing on the introduction to Capone. I don't recall that. Sustained.

Mr. Rosenthal: I respectfully except.

Q. When Mr. Turkus asked you on direct examination regarding whom you had seen at the Coffee Pot in the year 1933, did you then

Sol Bernstein—For People—Cross

3103

have in your mind the fact that Abe Reles was one of the men that hung out in that Coffee Pot?

Mr. Turkus: Objected to as repetitious.
The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. Did you wilfully conceal from this jury, when you were questioned on direct examination by Mr. Turkus, the fact that Abe Reles had hung out in this Coffee Pot in the year 1933, when you were asked by Mr. Turkus as to who were the people that hung out in that Coffee Pot? Do you understand the question? A. Just forgot, sir.

3104

Q. You just forgot? A. Yes, sir.

Q. That is your answer? A. Yes, sir.

Q. Did you ever steal a typewriter for Abie Reles? A. No, sir.

Q. What is the answer? A. No, sir.

The Court: You stole one for Strauss?

The Witness: Stole for Louis Capone and Strauss.

3105

Mr. Rosenthal: I ask that that be stricken.

The Court: Strike out the answer as irresponsive.

Mr. Rosenthal: And not only that, I now ask for a mistrial on the ground that the answer is prejudicial, has no foundation in fact whatsoever, is not in anywise allegedly connected with this or any other case. I ask that your Honor rule on the motion.

The Court: The Court's question about

3106

Sol Bernstein—For People—Cross

Strauss was to straighten you out on the typewriter incident because you had the names mixed. The irresponsible part of the witness' answer was stricken. It was not called for by the Court. The jury is instructed to disregard it and I think the jury is old enough and mature enough and intelligent enough to do that. The motion for mistrial is denied.

Mr. Rosenthal: Exception, sir.

3107

Q. Did you bring a stolen typewriter into the home of Abe Reles? Did you physically carry a stolen typewriter into the home of Abe Reles?
A. No, sir.

Q. At no time? A. Brought a typewriter over, yes.

Q. Do you know what the word "carry" means? A. You said if I stole it, didn't you?

Q. Do you know what I said when you answered the question? A. I thought you meant if I stole it.

3108

Q. Do you know what I said when you answered the question?

Mr. Turkus: Objected to as answered. It is repetitious.

Mr. Rosenthal: I want to know if this man is making answers without knowing what I am talking about.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

The Court: It is only quarreling.

Q. Did you bring a stolen typewriter into the home of Abie Reles?

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3109

Mr. Turkus: Objected to as already answered.

Q. Yes or no.

The Court: Knowing the same to be stolen?

The Witness: I bought it.

The Court: You bought it?

The Witness: Yes, sir.

The Court: Did you know it to be stolen?

3110

The Witness: No, sir.

Q. Where did you buy this typewriter? A. In a junk shop.

Q. What junk shop? A. On Osborne and Blake.

Q. Give me the name and address. A. I don't know the name of the address. I think it was on Osborne and Blake, a couple of junk shops over there.

Q. Which side of the street and which street is it on? A. There is a couple of them over there.

3111

Q. Which one is it that you say that you bought the typewriter in? A. There is lots of them over there.

Q. What? A. Lot of junk shops.

Q. You just said there was a couple of them over there?

Mr. Turkus: Objected to as repetitious, argumentative.

The Court: Sustained.

3112

Sol Bernstein—For People—Cross

Q. Which is the one, if you can tell us, that you bought it from? Where is it located? What side of the street is it on? Between what streets is it?

Mr. Turkus: Objected to.

Q. And what does it look like?

3113

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial, has nothing to do with the Rosen killing. Objectionable further that no time is fixed.

The Court: This has no direct relation to the issue. It is allowed by the Court with a considerable degree of latitude under the collateral impeachment rule. Under the collateral impeachment rule, you are bound by the witness' answer. You may not try a collateral issue.

Mr. Rosenthal: May I discuss this matter in the absence of the jury with this Court, in the interest of justice?

3114

The Court: The Court is familiar with the rule of law.

Mr. Rosenthal: I am now going further, sir, on a question of the interests of justice to discuss with the Court, in the absence of the jury, the question in respect to my pursuing this line of inquiry with this man.

The Court: If it has anything to do with any case other than this, it is a matter for chambers.

Mr. Rosenthal: That is what I asked

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3115

your Honor. May I discuss it in chambers with your Honor?

The Court: Not directly after adjournment because I am tied up with appointments.

Gentlemen of the jury, please do not discuss the case, let nobody talk to you about it, keep your minds open and please remember and follow any and all admonitions heretofore given. Recess until tomorrow morning.

3116

Mr. Talley: If your Honor pleases, may it be understood that all of the exceptions taken by the examining counsel, Mr. Rosenthal, apply to the defendant Weiss?

The Court: That applies throughout the trial for all counsel. That is the understanding.

Mr. Talley: I want to make sure there is no misunderstanding.

The Court: It will not be forgotten. It is on the record.

3117

The court will be in order. First the witness is taken out.

(The witness leaves the court room.)

Now the jury.

(Thereupon an adjournment was taken until Wednesday, October 29, 1941, at ten a.m.)

3118

Sol Bernstein—For People—Cross

Brooklyn, N. Y., October 29, 1941.

TRIAL RESUMED

(Mr. Rosenthal confers with the Judge before the bench, without the hearing of the jury.)

3119

Mr. Rosenthal: (within the hearing of the jury) Before proceeding further, if the Court please: Just before recess yesterday your Honor made a statement concerning a matter which I then referred to with a view of wanting the matter discussed in chambers. In view of the fact that you want to proceed with the trial, I now make a formal motion for a mistrial and the withdrawal of a juror, based upon the matter stated by this witness.

The Court: Motion denied.

Mr. Rosenthal: Exception.

3120

The Court: There having been a discussion quietly between counsel and the Court at the bench, not within the hearing of the jury.

Mr. Rosenthal: That is correct.

The Court: The Judge understands the situation.

Mr. Rosenthal: Yes. That is the only reason why I do not discuss at length now, because of the fact we have had a discussion at the bench.

The Court: I understand.

SOL BERNSTEIN, a witness in behalf of The People, resumed the stand and testified further as follows:

Cross-examination by Mr. Rosenthal (Continued):

Q. Do you recall answering Judge Talley when he was questioning you in respect to a gun being found in the car, in the automobile which you admitted stealing, which was the subject-matter of your plea of guilty in 1933—do you remember Judge Talley questioning you about that? A. I saw lots of guns, sir.

3122

Q. (The Court) The question is: Do you remember Judge Talley questioning you about that. A. I think he did, sir. I have seen lots of guns.

Q. I am not asking you whether or not you saw lots of guns; we will come to that afterwards. I am now asking you a specific question: Do you remember Judge Talley questioning you about the car that you were in at the time of your arrest, and that you admitted to the Court you had stolen in 1933 from a garage?

3123

Mr. Turkus: Objected to as repetitious; the witness has responded.

The Court: He said so.

Q. I am trying to draw his attention to a specific car—do you know the car I mean? A. Yes, sir.

Q. Did you tell Judge Talley there was no gun in that car? A. I did not understand him, sir. I seen lots of guns.

3124

Sol Bernstein—For People—Cross

Q. I am referring to that particular car in 1933 that you attempted to steal. Did you tell Judge Talley you did not see any gun in that car? A. I did not understand him, sir. I seen lots of guns, sir.

Q. Did you see lots of guns in that car? A. There were a few guns there, yes, sir.

Q. The man who was with you at the time that you were in that car was a man named Moe Cohen, wasn't he? A. Yes, sir.

3125

Q. What was Moe Cohen's business, a burglar?

Mr. Turkus: Objected to as incompetent, immaterial, and irrelevant.

Mr. Rosenthal: This is showing association, sir, at the time of the arrest, prior to the time he says he had met any of these defendants.

The Court: The question is not whether he knows now that Moe Cohen was a burglar.

3126

Mr. Rosenthal: Yes.

The Court: But whether at the time of his association in 1933 he knew Moe Cohen's business?

Mr. Rosenthal: Yes, I will put it your Honor's way. I withdraw the question.

Q. When Moe Cohen was riding in the car with you at that time did you know that he had a roll of insulated wire in his pocket? A. I cannot tell you that.

Q. Did you^s know what his business was when he was riding in the car with you that you had stolen? A. Yes, sir.

Q. What was Moe Cohen's business? A. A stick-up fellow.

Q. Did you know he had a gun on his person at that time when he was riding in this stolen car with you? A. No, sir, it was in the car, sir.

Q. Where in the car was the gun? A. I think it was in the back seat or the front seat; I do not recall. I know there were guns there.

Q. You knew there were guns there? A. Yes, sir; I did not understand Talley before.

Q. Were you asked this question by Judge Talley on page 646, and did you give this answer:

3128

"Q. And that is the only time out of seventy-five or a hundred times you stole cars that you were arrested? A. Yes, sir."

"Q. And on that occasion when you were arrested for stealing the cars, there was a gun found—"

I withdraw the question.

"Q. And on that occasion when you were arrested for stealing the cars, there was a gun found in the car, wasn't there? A. No, sir."

3129

Mr. Turkus: I object. He said that he did not understand the question.

Mr. Rosenthal: I have a right to see whether or not he made that answer and find out what he did not understand about it.

Mr. Turkus: You have not read the next question and answer.

Mr. Rosenthal: I will read all the questions you want.

3130

Sol Bernstein—For People—Cross

Q. "Q. You don't mean that, do you? A. No, sir—yes, sir."

Mr. Turkus: I object.

The Court: Objection overruled.

Q. Were you asked those questions by Judge Talley? A. I did not understand him; I seen lots of guns.

3131

Q. Will you please let me finish the question? Were you asked those questions by Judge Talley and did you give those answers only yesterday in this court-room? A. Yes, sir. I did not understand him, sir.

Q. So that when you answered the question that there was no gun in that car in which you were riding when it was stolen, you did not understand the question that Judge Talley was asking; is that right?

Mr. Turkus: Objected to as repetitious. He just said that.

3132

The Court: Sustained as repetitious.

Mr. Rosenthal: Exception.

Q. Who else was in the car with you? A. Meyer Halperin.

Q. Did you know Meyer Halperin's business at that time? A. Yes, sir.

Q. What was Meyer Halperin's business? A. He was also a stick-up fellow.

Q. Were there just the three of you in that car, the two stick-up men and you? A. Yes, sir.

Q. Now I ask you again: Did you know or did you see a roll of insulated wire in that car

either just before you were arrested or at the time you were arrested?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant, and repetitious.

Mr. Rosenthal: This is not repetitious. I asked him whether he saw it in Cohen's pocket—

Mr. Turkus: I have an objection that it is incompetent, immaterial and irrelevant and repetitious.

3134

The Court: It is not material whether he saw it at the time of his arrest or whether he saw it before.

Mr. Rosenthal: That is what I want to know.

The Court: And he continued the association; what his knowledge of the guns was at the time of the arrest when the police found him—that is different.

Mr. Rosenthal: I understand what your Honor has in mind; and I will pursue it that way.

3135

Q. Before these men entered the car with you, did you know they were both stick-up men? A. Yes, sir.

Q. You knew there were guns in that car too? A. Yes, sir.

Q. You knew one of them had a roll of insulated wire with him, didn't you? A. No, sir.

Q. That you did not know? A. Yes, sir.

Q. Were there ropes in that car? A. Yes, sir.

Q. All of this you knew before your arrest? A. Yes, sir.

3136

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Q. Did you know the ropes were going to be used to tie up somebody in a stick-up? A. Yes, sir.

Q. Did you know the guns were going to be used by one of these men, or by you or somebody else in your company, in a stick-up on that man in the event he resisted you? A. Yes, sir.

Q. So that in reality, when you were arrested for stealing the automobile, you were out on a stick-up with two stick-up men, weren't you? A. Yes, sir.

3137

Mr. Turkus: I object to that as already answered.

The Court: Objection overruled.

Q. (The Court) What judge took the plea? A. I believe it was Martin, sir.

Q. Were you ever charged with robbery in that case, or attempted robbery? A. No, sir.

Q. Did you ever disclose to the Court or to the probation officer that you were with two stick-up men and were going to hold up somebody and kill him if necessary in order to get his money?

3138

Mr. Turkus: I object.

Mr. Rosenthal: In view of the fact that the Judge brought out there was a plea taken in a degree by another judge in this court, I want to show that this man at that time concealed these facts from the court.

The Court: I don't think this is a matter of impeachment, because he had no obligation to make disclosures.

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3139

Mr. Rosenthal: If he was asked by the probation man whether or not he was on a stick-up.

The Court: The Court has made inquiry and received an answer. We will let it rest there.

Mr. Rosenthal: Exception.

Q. Now, you continued to be a thief up until the time that you gave yourself up, did you not? A. No, sir, only when I got orders, sir.

3140

Mr. Rosenthal: I ask that "only when I got orders" be stricken out.

The Court: Strike it out.

Q. You continued to steal automobiles up to the time of your arrest or your giving yourself up in 1940, didn't you? A. Before I gave myself up.

Q. Up until 1940 you continued to steal automobiles, didn't you? A. Yes, sir.

Q. Did you continue to associate with these two stick-up men you had been out with in 1933?

3141

A. No, sir.

Q. Is it not a fact that in California you and others held up the Victor Hugo Restaurant in Los Angeles? A. No, sir.

Q. Have you testified as a witness in any other case except the Gangy Cohen case, up to this case? A. The Yuran case, sir.

Q. By that you mean in the Grand Jury? A. Yes, sir.

Q. But the only two times you have been in court testifying before a jury similar to this is the time you testified now and the time you tes-

3142

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tified in the Gangy Cohen trial in the mountains, in June of 1940; is that right? A. Yes, sir.

Q. Now, in the Gangy Cohen trial, in Monticello, were you asked these questions regarding whether you were a thief, and did you give these answers— Let me start two questions before that.

I withdraw the question I asked. You were questioned by Mr. Price on cross-examination:

3143

“Q. You are very anxious to let the jury hear everything you have to say?” and you answered: “Yes.”

“Q. You want to make sure every word you say is heard? A. I am telling the truth.”

Do you remember those questions and those answers? A. Yes, sir.

Q. “Q. Were you coached to answer? A. Telling the truth.”

Do you remember that question and answer? A. If it is in the book I said it.

Q. Do you recall saying it? A. If it is in the book I said it.

3144

Q. Have you any independent recollection, whether it is in the book or not, that you told the jury in the Gangy Cohen trial that you were telling the truth?

Mr. Turkus: I object. It is a waste of time. The answer is responsive.

Mr. Rosenthal: The next question will show it.

Mr. Turkus: Read it. Now this is becoming a filibuster. I object.

Mr. Rosenthal: I object to the statement of Mr. Turkus. It is not an objection; it is a statement. Now, your Honor

asked that we conduct ourselves orderly. I ask you to ask the District Attorney to make objections without speeches, and counsel for the defense will be under no necessity to answer those speeches.

The Court: You are right.

Mr. Turkus: There is an objection pending.

The Court: If the accuracy of the minutes is conceded, it will avoid this.

Mr. Turkus: I have no objection to concede it.

Mr. Rosenthal: May it appear then on the record that the questions I am reading—and I trust Mr. Joseph will follow and see that I am reading correctly—the questions which I am reading and the answers which I am reading are taken from this witness's testimony under oath in the trial in the County Court, Sullivan County, of the People of the State of New York against Irving Cohen, in June of 1940.

Mr. Turkus: And one thing further: That the direct testimony was three pages and the cross-examination began at page 4 and ended at page 78, showing that the direct examination was three pages and the cross-examination was twenty-five times that, or seventy-five pages.

Mr. Rosenthal: You see, Judge. Again he—

Mr. Turkus: That is a concession I will make as to the authenticity of the minutes.

3148

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Mr. Rosenthal: You see, again we have statements which form no part of the concession and only call for retaliation by counsel for the defendants. I want to desist from that, but I do not intend to let Mr. Turkus get away with continuous statements in the presence of this jury, without answering.

3149

I ask your Honor to tell Mr. Turkus to make proper objections and orderly objections, and not to make statements.

Mr. Turkus: That was not an objection; that was a concession.

The Court: What was stated after the concession has no bearing upon the case and should not have been said.

3150

Mr. Talley: With respect to the concession made by the District Attorney as to the accuracy of these minutes in the trial in the Sullivan County Court, may we have that concession as to the entire minutes that are here, rather than simply as to the questions that are being asked now of the witness by Mr. Rosenthal, and the answers made? Can we have a concession on the record that the record we have here is an accurate stenographic record of the trial?

The Court: That needs no answer.

Mr. Talley: So as to preclude the necessity of bringing down the court stenographer?

The Court: You mean so as to foreclose either side from disputing the stenographic accuracy on any specific point,

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because such inaccuracies may occur, and either attorney at the proper place will have a right to challenge the accuracy.

Mr. Turkus: You need only one concession. There are two counsel for the defendants.

The Court: Suppose we forget all this and proceed in an orderly manner.

Mr. Talley: Will your Honor pass upon this?

The Court: I cannot, because that would be to shut the windows to the truth; if an error has been made by the stenographer, either side may challenge it.

3152

Mr. Talley: We have the stenographic record.

The Court: Please do not argue it now. We will proceed in an orderly manner.

Mr. Talley: I except to your Honor's refusal to allow me to make a statement to this Court.

Mr. Rosenthal: May we have stricken from the concession—

3153

The Court: Please proceed with the examination. Please proceed as if no concession had been made.

Mr. Rosenthal: All right.

Q. Now then, do you recall now at this time whether or not you were not directly asked the question in the mountains, in the Gangy Cohen trial:

“Q. You want to make sure every word you say is heard? A. I am telling the truth.

3154

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"Q. You were coached to answer? A. Telling the truth."

Have you any recollection of whether or not you did not make, in form or substance, that statement in the presence of the Court and the jury in the Gangy Cohen trial? A. About Gangy, yes, sir.

Mr. Rosenthal: I move to strike out the answer as not responsive.

3155

By the Court:

Q. Do you remember those questions and answers—yes or no? A. If it is in the book.

Q. No, the evidence. Do you remember that? A. Yes, sir.

Mr. Rosenthal: May I have his first answer stricken from the record?

The Court: Let it stand.

Mr. Rosenthal: Exception.

3156

Q. In the very next question after that:

"Q. You are a thief, aren't you? A. No, sir.

"Q. When you committed petit larceny"—

Question withdrawn. I jumped a question. I want to put it in. Let me start over again.

"Q. You are a thief, aren't you? A. No.

"Q. You are not? A. No, sir.

"Q. When you committed petit larceny? A. Yes.

"Q. Is a man who steals a thief or angel? A. That was years ago."

A. I told you—

Q. Now wait a minute.

"Q. You were a thief years ago?"

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3157

"The Court: Let us modulate our voices; there is no use of this loud talking. Talk in a reasonable tone.

Q. "Q. You don't mean to answer you were not a thief? A. Years ago.

"Q. You did not mean to answer you were not a thief? A. Yes.

"Q. You know you are a reformed thief, is that what you mean? A. What do you mean by 'reformed thief'?

3158

"Q. You don't know what I mean? A. I am a loan shark now."

Do you remember being asked that? A. Yes, sir. I told the lawyer I had two convictions.

Q. You told the lawyer you were a reformed thief? A. I meant—

Q. Listen to me, sir. You told the lawyer you had been a reformed thief for years, didn't you, that you were only in the loan shark business—

Mr. Turkus: I object. That is not the testimony. It speaks for itself.

3159

The Court: Objection sustained.

Q. Were you asked those questions and did you give those answers?

Mr. Turkus: Objected to as repetitious.

Q. (The Court) Do you remember it? A. Yes, sir.

Q. Now, when was the last, approximately the last, of the seventy-five or one hundred cars you stole—the year and approximately the month, if

3160

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you can remember, when you stole the last car. Do you remember that? Can you answer that correctly? A. The last car?

Q. Yes. When, approximately, was the year—I will ask you that first—1939 or 1940? A. 1940.

Q. How long before you surrendered yourself in 1940 was it that you had stolen the last car, a week or two weeks? A. I don't think it was in 1940.

3161

Q. You are the only one who can tell me. I just asked you. You said 1940. Was it 1939? A. I think it was 1939.

Q. Might it have been 1940? A. Might have been 1940, too, I cannot remember, sir.

Q. Can you remember it this way: How long after Judge O'Dwyer came into office and started a war, as Mr. Turkus called it, on the mob, was it that you stole your last car?

Mr. Turkus: I object, it is what the witness called it "war on the mob."

3162

Mr. Rosenthal: I will withdraw it.

Q. How long after Judge O'Dwyer came in office did you steal your last car? A. I think it was in 1939, sir.

Q. But you are not sure? A. No, sir.

Q. Will you give me your best estimate— Let me withdraw that and I will put it this way: It was only a very short period before you surrendered yourself? A. I think it was 1939, sir.

Q. Will you listen to my question? A. I did not keep a diary.

Q. Are you finished? A. Yes, sir.

Q. Now listen to the next question. It was

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3163

not very long before your surrender that you stole your last car, was it?

Mr. Turkus: I object. It is repetitious. He has already answered. There have been a half dozen questions as between 1940 and 1939.

Mr. Rosenthal: I haven't got a direct answer.

Mr. Turkus: It is repetitious. It is an endless cross-examination.

3164

The Court: Please do not argue. The objection is sustained as repetitious.

Mr. Rosenthal: Exception.

Q. You volunteered to me just a little while ago that you had seen guns on many occasions. Didn't you say that when I asked you?

Mr. Turkus: I object to the form of the question. It is repetitious.

Mr. Rosenthal: It is a preamble to the question on impeachment.

Mr. Turkus: I object to the form and as repetitious.

3165

The Court: We know he said it. Objection sustained.

Q. Now then, in the mountains, in the Gangy Cohen trial, when you told the jury that you were telling the truth, were you asked this question and did you give this answer—

Mr. Turkus: I am going to object to the form of the question, to the form of

3166

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the preamble, so we might as well save time.

Mr. Rosenthal: I will do anything you want within reason. I will withdraw the question and leave the preamble out if it hurts you.

Mr. Turkus: I ask that "if it hurts you" be stricken out.

Mr. Rosenthal: Let us get along.

Mr. Turkus: I will if you act properly.

3167

Mr. Rosenthal: You conduct yourself properly and you will have no trouble with me.

Mr. Turkus: You do so, and we will get along all right.

Mr. Rosenthal: I don't know which one of us will be accused of being a woman for wanting the last word.

Q. In the Gangy Cohen trial in the mountains, in Monticello, in 1940, were you asked these questions and did you give these answers:

3168

"Q. Are you a one-man finance company, with muscles and gun?

"Mr. Dickerman: I object to that on the ground already stated.

"Q. You know what muscles are? A. Yes, sir.

"Q. You know what guns are? A. Yes.

"Q. You have seen a gun many times? A. No, sir.

"Q. You have never in your life seen a gun? A. Yes.

"Q. Why did you say at first, 'No, sir?' A. I just reminded myself.

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3169

"Q. How many times did you see a gun? A. Once.

"Q. What year was it? A. I don't know what year it was. I seen it."

Were you asked those questions in the mountains and did you give those answers? A. I can explain about that.

Mr. Rosenthal: I move the answer be stricken out as not responsive.

3170

Q. (The Court) Yes or no? A. Yes, sir.

Q. That was not true, that you had only seen a gun once in your life when you told that to the jury in the Gangy Cohen trial? A. No, sir.

Q. The fact is, you had seen guns as early as 1933 when you went out with a couple of stick-up men?

Mr. Turkus: Objected to as repetitious?

The Court: Objection overruled.

A. Yes, sir.

Q. Had you seen them prior—I will use the word "before"— Let me withdraw it.

3171

Q. You had seen guns before 1933 when you were caught in company of these stick-up men, hadn't you? A. No, sir.

Q. How long had you known these two stick-up men?

Mr. Turkus: Objected to as repetitious.

Mr. Rosenthal: I have not asked him how long he had been associated with them. I am trying to find out previous association with these men.

The Court: Objection overruled.

3172

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Q. How long had you known these two stick-up men? A. A few months, sir.

Q. Had you been with them on other occasions during the three months? A. No, sir.

Q. Did they tell you when you met them three months before that they were stick-up men? A. No, sir, I knew it.

Q. Did you go out in a car with knowledge that you were going to stick up somebody?

3173

Mr. Turkus: Objected to as repetition and as already answered.

The Court: He has already said it.

Mr. Rosenthal: I will withdraw it. I think you are right.

Q. Continuing, after the questions I just asked you: Were you asked these questions in the mountains—the very next question on page 8:

“Q. What year was it?”—so you will get the connected thought, we are now talking about the gun you had seen before once in your lifetime: is that clear to you?

3174

“Q. What year was it? A. I don't recall the year.

“Q. Do you want me to refresh your recollection? A. Maybe you can.

“Q. Who was with you when you saw that gun? A. Harry Strauss.

“Q. Where was that? A. That was in Brownsville.” Do you remember being asked those questions and giving those answers? A. Yes, sir.

Q. Had you forgotten, when you were in the mountains in the Gangy Cohen trial, that you

saw guns when you went out on a stick-up in 1933, when you told the jury you had only seen a gun once in your life? Had you forgotten about that?

Mr. Turkus: I object.

Mr. Rosenthal: This is on his credibility.

The Court: Objection overruled.

Q. Do you understand the question? A. Repeat it again.

3176

Q. I will repeat it. When you were under oath in the Gangy Cohen trial in the mountains, in Monticello, and you were asked about guns, and when you had ever seen them, while you were on the stand had you forgotten all about the fact that in 1933, while out with a couple of stick-up men, you saw guns? Had you forgotten about that when you testified? A. No, sir.

Q. You had it in your mind? A. What do you mean, I had it in my mind?

3177

Mr. Turkus: I object. If he hadn't forgotten it, it must have been in his mind.

Mr. Rosenthal: He said he didn't know what I meant. I will make it plain. I want to make sure that this man understands everything I say, if I have to repeat it twenty times. I don't want him to say, as he now says, to Judge Talley's question, that he did not understand it.

Mr. Turkus: I object to the speech.

Mr. Rosenthal: That is not a speech,

3178

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but just a statement addressed to the Court.

Mr. Turkus: Mr. Rosenthal addresses your Honor and he terms it an objection, although it is a speech. If I try to make an objection it becomes a speech. I have an objection. He said he had not forgotten.

3179

Q. Did you deliberately conceal from the jury in the Gangy Cohen case the fact that you had been out with two stick-up men with guns in 1933?

Mr. Turkus: I object

The Court: Sustained. He was not asked that.

Q. Did you deliberately conceal from the jury in the Gangy Cohen case the fact that you had seen guns while you were out with a couple of stick-up men in 1933?

3180

Mr. Turkus: I object.

The Court: I think this is a matter of argument for the jury. You have his admission.

Mr. Rosenthal: I will accept your Honor's ruling. I think it is a perfectly proper question, but if your Honor--

The Court: I think it goes into the realm of argument. He has admitted he did not tell the truth. He had seen lots of guns, had been out on stick-ups, or in stick-up cars.

Mr. Rosenthal: I will not press it fur-

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3181

ther. I have other matters of equal importance.

Q. You were shown a gun by Harry Strauss in 1937, weren't you? A. I don't know what year it was—yes.

Q. You were asked by Harry Strauss to go out and kill the very man that you testified about—to go to California to kill the very man you were testifying against, weren't you? A. Yes, sir.

Q. (The Court) What man is that? A. Gangy Cohen.

3182

Q. In 1937— Question withdrawn.

Q. Didn't you tell the jury in the mountains that the only time you saw a gun was at the time with Harry Strauss—the year you think was 1937 although you cannot recall it—that Harry Strauss showed it to you and asked you to go to California and kill Gangy Cohen—didn't you tell that to the jury in the mountains? A. No, sir.

Q. Is it your testimony— Were you asked these questions and did you give these answers in the Cohen trial in Monticello, starting at page 13:

3183

“Q. That was the time that Harry Strauss told you to go there to kill Cohen? A. That is right.

“Q. Did he give you a gun? A. No, sir.

“Q. What”—I will read it just as it is here. It is a typographical error— “Q. What is that time?”

Mr. Turkus: The word should be “was.”

3184

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Mr. Rosenthal: That does not appear in the question.

Mr. Turkus: Read it so as it makes sense.

Q. "Q. Was that the time, in 1937, that you saw a gun? A. What do you say?"

Question repeated. "Do you want to think about it? A. I don't know when it was.

3185

"Q. Didn't you say before you thought it was in 1937? A. I don't know.

"Q. Could it have been in 1937? A. Maybe.

"Q. Didn't Strauss give you a gun when you went to California in 1937? A. I seen a gun. He did not give me a gun.

"Q. Who had the gun when you saw it? A. Harry Strauss." Do you remember being asked those questions and giving those answers?

3186

Mr. Turkus: I object. It had nothing to do with the Rosen case. There is nothing inconsistent between that testimony and what he said here in response to Mr. Rosenthal's question.

Mr. Rosenthal: He just answered the question before I read this testimony that he—

The Court: (interrupting) Do not argue. There is no harm to it. Objection overruled.

Q. Did you give these answers to these questions in the mountains? A. Yes, sir.

Q. Didn't you just tell me before I asked you these questions that you did not say to the jury in the mountains that the time you had seen the

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3187

gun, which you said was once in your life, was the time it was shown to you by Harry Strauss before he sent you out to kill Gangy Cohen? Didn't you say that to me a minute ago.

Mr. Turkus: Objected to as repetitious.

The Court: Sustained on that ground.

Mr. Rosenthal: Exception.

Q. Whenever it was, whether it was 1937 or whatever year, that Harry Strauss asked you to go out and kill Gangy Cohen in California, did you leave New York and go to California? A. Yes, sir.

3188

Q. Did you see Cohen in California? A. Yes, sir.

By the Court:

Q. Is that the time that Herschel Bernstein was out there? A. I really cannot tell you the year.

Q. You told us it in this way: That Herschel got in trouble out there and that he was convicted and sent up? A. Yes, sir.

3189

Q. Is that the place, whether or not it was on that occasion, that you met Herschel Bernstein in California? A. I really cannot tell you; I think it was in 1937 or 1938.

Q. It was 1937, wasn't it? A. I think so, your Honor.

Q. Now, supposing I ask you this—I don't know whether or not this has any bearing on this case, but we will find out—When you put up the money to defend Herschel Bernstein at the time of his arrest in California and his con-

3190

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viction in California, did you have any particular reason for putting up the money? A. He got himself in trouble.

Q. You mean it was just a matter of friendship? A. Yes, sir.

Q. It was not that you were out there on a matter of mutual interest? A. No, sir.

Q. You were not both out there to kill Gangy Cohen? A. No, sir.

3191

By Mr. Rosenthal:

Q. Didn't you go out to California with Bernstein?

Mr. Turkus: Objected to as repetitious.

The Court: There are two Bernsteins. One was in 1940 and the other was in 1937. These are two different persons. In the examination by Judge Talley there is considerable space in the record given over to contact with Herschel Bernstein. In your examination yesterday you referred to another Bernstein.

3192

Mr. Rosenthal: Yes, a Joe Bernstein he referred to.

The Court: That is a different man, isn't it?

Mr. Rosenthal: Yes, sir.

The Court: I know that Herschel was also known as "Meyer"—that was the name on his conviction in California. That is why I made inquiry as to whether or not the one you were questioning about was the same one that Judge Talley was questioning about.

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3193

Mr. Rosenthal: He volunteered the name "Joe." I don't know the difference between either.

The Witness: We did go out together.

Q. You both went out together? A. Yes, sir.

Q. Do you remember going out to kill anybody? A. No, sir. Joseph Bernstein went alone, about a year after that.

Q. I am talking about 1937, about Herschel.
A. No, sir.

Q. You did not go out with him? A. No, sir.

Q. Did you just meet him there? A. No, sir, one year I went down with him; I do not know what year it was.

Q. That was in 1937, the conviction? A. That must be that year then.

By Mr. Rosenthal:

Q. Just try to think. Didn't you leave Brooklyn with Herschel Bernstein after you had a conversation with Harry Strauss in which he asked you to go to California to kill Gangy Cohen?

3195

Mr. Turkus: Objected to as repetitious.

The Court: I have just sent for the record, and it will be here in a moment.

Mr. Rosenthal: I am pursuing the line your Honor was; I am trying to refresh this man's memory.

The Court: Objection overruled.

Q. What is your answer? A. What is that?

3196

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By the Court:

Q. Have you any memory that you went out with Herschel Bernstein, the both of you, to kill Gangy Cohen? A. Oh, no, sir.

Q. Cohen was in the movies? A. I got him the job.

Q. He was quite a shot in the movies? A. No, sir, he was working as an extra. I got him the job.

3197

By Mr. Rosenthal:

Q. You got Cohen a job in California? A. Yes, sir.

Q. You had connections in California that enabled you to get Cohen a job in the movies?

The Court: Pardon me, Mr. Rosenthal; I will show you this record. I was in error as to the year. It is 1936.

Mr. Rosenthal: May I see the record, Judge?

3198

The Court: Yes.

Mr. Turkus: May we have an answer to the question Mr. Rosenthal just put to the witness about his connection in the moving pictures and who the connection was with?

Mr. Rosenthal: There goes a speech again, Judge, while you are not looking.

The Court: If you come up here, Mr. Rosenthal, I will show you the record, the fingerprints. I cannot show you the report.

(Mr. Rosenthal confers with the Judge without the hearing of the jury.)

By Mr. Rosenthal:

Q. I have asked you a question and I will repeat it. You answer this yes or no: You had connections in the movie world, you say, which enabled you to get Cohen a job in the movies?

Mr. Turkus: I object to him reframing the question. I want an answer to the question Mr. Rosenthal first asked.

Mr. Rosenthal: I will withdraw it.

3200

Mr. Turkus: Let the stenographer read it word for word.

Mr. Rosenthal: I will withdraw it as long as you are telling me what to do. I will withdraw it entirely. I am withdrawing the question, so the objection fails.

Q. Did you know in 1937 that Herschel Bernstein was a burglar and a crook? A. What do you mean?

Q. You don't know what a burglar and a crook is? A. (Witness remains mute.)

3201

Q. Do you know what a burglar or a crook is? A. I heard of it.

Q. Why, you associated with him, didn't you? You rode in the same car with him in California, didn't you? A. Yes, sir.

Q. When was the first time you rode to California with Herschel Bernstein?

Mr. Turkus: Objected to as repetitious.

Mr. Rosenthal: You were unable to get an answer from him, Judge. I will try to get one.

3202

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The Court: The question was only as to the year. I just showed you the record.

Mr. Rosenthal: I want to find out a number of things about Herschel Bernstein.

The Court: I think that is satisfactory as placing the time.

Mr. Rosenthal: Yes.

By the Court:

3203

Q. How long did you know Herschel? A. From the time I met him in Raymond Street.

Q. Many years ago? A. Yes, sir.

Q. You ~~know~~ he was a notorious Brownsville burglar? A. Yes, sir.

Q. You knew that right along? A. Yes, sir, but I never seen him or heard of him.

Q. That he was what you call an "ace"? A. A thief.

Q. I mean as a burglar also. A. An "ace", yes, sir.

3204

By Mr. Rosenthal:

Q. Did you follow carnivals all over the country with him? A. No.

Q. Do you remember following carnivals? A. Yes, sir.

Q. When did you first start to follow carnivals? A. I cannot tell you that.

Q. So long ago you cannot remember? A. Yes, sir.

Q. Away back in 1932 or '33 wasn't it, when you were only 18 or 19 years of age, you started to follow carnivals all over the country, didn't

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3205

you? A. What do you mean, all over the country; the furthest I went was Philadelphia or Maryland at the furthest.

Q. You had no job with the carnival, did you?

A. I was a "schil."

Q. You mean you were one that was employed by the carnival itself to bring en people to play certain games; is that what you mean? A. Yes, sir.

Q. Is it not a fact that while the farmers were attending the carnival you would attend their homes and burglarize them? Wasn't that the way you would follow carnivals ever since you were eighteen years of age? A. No, sir.

3206

Q. Did you ever enter farmers' homes to burglarize them while they were attending the carnivals? A. No, sir.

Q. At any time? A. No, sir.

Q. Did Herschel Bernstein go traveling with carnivals with you? A. No, sir.

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

3207

Q. How long did you continue to follow carnivals, up until when? A. The season, sir.

Q. Every year up to 1940? A. No, sir.

Q. What year did you stop following carnivals? A. I cannot tell you.

Q. Can you give us any idea? A. I cannot tell you the year. I might have gone whenever there was a fair, like over in Newark.

Q. I want you tell me as near as you recall when you stopped following carnivals.

3208

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Mr. Turkus: Objected to as argumentative between the witness and the lawyer. The preamble is improper and objectionable.

Mr. Rosenthal: I will put it in a different form.

Q. You understand, I am not asking you what you might have done, Bernstein—do you understand that? A. Yes, sir.

3209

Q. I am asking you to give this jury your best recollection of when you stopped following carnivals.

Mr. Turkus: Objected to as repetitious. The Court: Objection overruled.

By the Court:

Q. When did you stop? How many years ago? A. I think it is 1935.

By Mr. Rosenthal:

3210

Q. It may have been 1939? A. No, sir.

Q. 1938? A. No, sir, I don't think so. —

Q. Which is it, "No, sir," or you don't think so?

Mr. Turkus: Objected to as repetitious. The Court: Overruled.

Q. Which is it, Bernstein? A. I don't recall, sir.

Q. Now do you recall the year you took your trip in an automobile with Herschel Bernstein,

whether or not you stopped off at different principal cities on your way to California?

Mr. Turkus: Objected to as incompetent and immaterial and irrelevant, nothing to do with this matter.

Mr. Rosenthal: I will show you association with criminals of every type that this man had from the time—

Mr. Turkus: I can show you some associations myself that he had that are foreign to this issue.

3212

Mr. Rosenthal: Not the angel you depict him.

Mr. Turkus: I don't depict him as an angel; I have him associated with your clients.

Mr. Rosenthal: If you are going to make remarks, you will get answers, Mr. Turkus.

Mr. Turkus: I am satisfied.

Mr. Rosenthal: (to the Court) Again I ask you to ask this man not to make remarks. I do not want to be drawn into an argument with him, but I am not going to sit idly by and let him get away with anything in this court-room. If your Honor will tell him to make proper objections and not make side remarks—I don't want to make them, but I will make them every time he does.

3213

Mr. Turkus: I have an objection.

The Court: Objection overruled.

Q. Did you understand the question? A. Will you repeat it again?

3214

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Q. Did you stop on your ride with Herschel Bernstein throughout the country in different cities of the United States, on your way to California? A. I had to.

Q. Did you go by automobile? A. Yes, sir.

Q. Did he, with your knowledge, commit thefts in each of the states or cities or counties you stopped in?

3215

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

A. No, sir.

Q. The only burglary or theft he committed to your knowledge was the one he committed in California, is that right?

Mr. Turkus: Objected to as repetitious.

The Court: You mean on that trip?

Mr. Rosenthal: Yes.

The Court: Objection overruled.

3216

Q. Is that right? A. Yes, sir.

Q. You were with him when he committed that burglary, weren't you?

Mr. Turkus: Objected to as repetitious.

The Court: Objection overruled.

Q. (The Court) Were you in on that job?

A. No, sir.

Q. Were you in that town at the time he committed the job?

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3217

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: He has already stated that.

Q. Weren't you living with him at the time he committed that job?

Mr. Turkus: Objected to.

The Court: Objection overruled.

Q. (The Court) Rooming with him? A. No, sir.

3218

Q. Were you in the same hotel together, rooming? A. No, sir.

Q. Now, when you went to California—before you left for California with him you knew he was a notorious crook, didn't you?

Mr. Tarkus: Objected to as repetitious. He told the Court he was an ace thief.

The Court: He knew it for years; he could not have lived in Brownsville without knowing him.

3219

Q. The different times you went to California you paid your own expenses, didn't you?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Sustained as immaterial.

Mr. Rosenthal: Exception.

I want to show that this man had no means of livelihood; that these supposed-to-be vacations he took throughout the United States in all those different years at that time, paying his own expenses,

3220

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without any income, the jury has a right to infer whether he is telling them the truth or not. He said he was shylocking, gambling, etc., and who he associated with.

Mr. Turkus: That has nothing to do with the Rosen murder, you forget.

The Court: You can inquire whether or not he had any funds when he went there, and if not how he paid his expenses.

3221

By Mr. Rosenthal:

Q. When you left New York what funds did you have with you, any? A. Yes, sir.

Q. How much money did you have with you when you left New York to go to California?

Mr. Turkus: Objected to unless the time is fixed.

3222

Q. When you went with Herschel Bernstein, we will take that one, that was in 1936. A. I won some money.

Q. I did not ask you whether you won. I asked you how much money you had. A. I know I won a lot of money; I don't know how much.

The Court: Hundreds, thousands, or what?

The Witness: It must have been about a thousand dollars.

Q. Who did you win it from? A. Shooting crap. I won lots of it shooting crap, lots.

Q. So that each time you took a trip to Cali-

fornia you took it on money you won shooting crap; is that so?

Mr. Turkus: I object. That is not the testimony. He did not say that.

Mr. Rosenthal: I am asking him, so as to shorten it.

The Witness: No, sir, I had a reason for it.

Q. You went, you said, to California, five or six times? A. Yes, sir, I had a reason for it.

3224

Q. Didn't you go there on a vacation each time? A. To avoid murder, sir, that is the qualification; to avoid murders. That is what I call a vacation. Don't you think so?

Mr. Rosenthal: I move to strike that out.

The Court: Strike it out as unresponsive.

Q. Weren't you asked in the mountains, in the Cchen trial, these questions, and didn't you give these answers:

3225

"Q. You went to California many times? A. Yes.

"Q. Pursuant to request of Harry Strauss? A. That is right.

"Q. Who paid your expenses? A. Nobody paid my expenses.

"Q. How many times, tell us exactly, did you go to California? A. Maybe ten times.

"Q. How many times did you go between 1937 and the time you were taken into custody? A. About five or six times.

3226

Sel Bernstein—For People—Cross

"Q. And on every one of these five or six times you went for a vacation? A. That is right.

"Q. And you paid your own expenses? A. That is right."

Were you asked those questions and did you make those answers? A. Don't you think it is a vacation—

3227

Mr. Rosenthal: I move to strike out the answer in view of the fact your Honor has admonished this individual to answer questions and not to volunteer anything.

The Witness: Yes, sir.

Mr. Rosenthal: You wait. I am addressing the Court. Do not talk to me when I am addressing the Court. Do you understand that? I don't want you to talk to me unless I am addressing a question to you.

I ask your Honor to admonish this man to answer questions.

3228

The Court: I am busy thinking what you have in mind. The court understood the previous answer of the witness as meaning he was away for reasons stated, that it did not mean he went there to do business, but he did go there on a vacation. Therefore, when he asked if that means a vacation, he meant you would accept it in the affirmative. This does not appear to contradict; but at least it clarifies the meaning. Let it stand.

Mr. Rosenthal: Will your Honor advise this man that he should answer questions and not volunteer anything?

Mr. Turkus: I object to it in view of your Honor's ruling that the answer was proper. He needs no admonition for making a proper answer.

The Court: Admonished.

Q. You had a candy store, didn't you? A. Yes, sir.

Q. Where was that candy store located? A. Amboy and Sutter, in the Brownsville section.

Q. Before going to that, you had a lot of friends in California, didn't you? A. Yes, sir.

3230

Q. When you made your trip there, you made your trip to go to see your friends in California, didn't you, because you had a lot of friends there? A. Yes, sir.

Q. When you made those trips you made them out of moneys you had won at dice games, is that right? A. Yes, sir.

Q. Isn't it a fact you told the jury in the Cohen trial—

"Q. You just went there for a vacation? A. Yes, I met a lot of friends there.

"Q. And what money did you use to go there, was it loan shark money? A. Yes."

3231

Were you asked those questions and did you give those answers? A. Yes, sir.

Q. Did you use loan shark money to go on your vacation or did you use dice money you won?

Mr. Turkus: I object.

The Court: Does that refer to this specific vacation?

Mr. Rosenthal: To the vacation; he had lots of friends there.

3232

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The Court: He said more than one vacation. It does not appear which one this refers to. Objection sustained.

Q. This candy store, where was that located?

A. Amboy and Sutter Avenue.

Q. Did you have a partner? A. I beg your pardon, sir.

Q. Did you have a partner? A. Yes, sir.

Q. What was his name? A. Glass, sir.

3233

Q. Is that Al Glass, otherwise known as Louis Glass, otherwise known as Cherry? A. Yes, sir.

Q. Is that the one? A. Yes, sir.

Q. When was it you had this candy store?
A. In 1938 or 1939, sir.

Q. Are you sure of the year? A. I think so.

Mr. Turkus: Objected to an incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Q. Did Harry Strauss ever visit that store?

A. No, sir.

3234

Q. That store was a blind, wasn't it? You know what a blind is? A. Yes, sir.

Q. Was that a blind for your loan shark business? A. Yes, sir.

Q. Did any of these stick-up men hang out in your candy store? A. No, sir.

Q. Any of these ace burglars hang out in your candy store? A. What do you mean by ace burglars?

Q. You told the Judge, didn't you, what an ace burglar was, I mean the same thing that the Judge means?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

Mr. Rosenthal: He said it was a blind. I want to find out.

Mr. Turkus: For the shylock business.

Mr. Rosenthal: It may have been a blind for a lot of other things.

By the Court:

Q. Well, did burglars hang out there? A. Yes, sir.

3236

Q. It was a big hangout? A. Yes, sir.

Q. When you and Strauss used to go to Miami, you say he stopped at the Nassau Hotel and you stopped at the Commodore? A. That year he was not there, but the year before.

Q. He was not there in February? A. No, sir. I know when he was there, but the year before. I can tell you who was there. Counselor Rosenberg was there. I was there.

Q. I am not asking you that, but both of these hotels are in the same locality, aren't they, 15th Street and Collins Avenue? A. I can explain it. Here is the Nassau on this side, and across the street is the Commodore.

3237

Q. Directly facing each other? A. Yes, sir.

Q. That is about 16th Street and Collins Avenue? A. Yes, sir, I think so.

Q. Isn't that on the ocean side of the street? A. No, sir, that is Collins Avenue.

Q. I mean towards the ocean? A. Yes, sir, Ocean Drive, Collins and Ocean Drive.

Q. Then the ocean? A. Yes, sir, the beach.

Q. There is a park right along the ocean drive and buildings only on one side? A. Yes, sir.

3238

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Q. That is seven blocks from 23rd Street and Collins Avenue? A. Yes, sir.

Q. Manny's Coffee House is there, isn't it? A. Mammy's.

Q. That was a hangout? A. Yes, and Dempsey's place also was a hangout.

Q. Little Augie Pisano used to hang out there? A. Yes, sir.

3239

Q. In Mammy's? A. I don't know about Mammy's; he hung around the Continental on 23rd Street and Lincoln Road, or something.

Q. Did they hang out at the Roney-Plaza pool? A. I don't know about that—the Roney-Plaza, yes.

Q. The finest pool in Miami Beach? A. Yes, sir.

Q. All swam there? A. Yes, sir.

By Mr. Rosenthal:

3240

Q. I just want to go back. When you told the jury in the Gangi Cohen case that you had only seen a gun once in your life, did you have in mind, while you were in the chair, under oath, that you had seen three guns in 1936 in the Rosen murder? Did you have that in your mind? A. I don't understand you, sir.

Q. I will make it plain for you. Do you remember you were a witness in the Gangi Cohen trial in the mountains? A. Yes, sir.

Q. In Monticello? A. Yes, sir.

Q. Do you remember you were asked a question as to how many times in your life you had ever seen a gun—do you remember that? A. Yes, sir.

Q. You remember that you told the jury sitting in the box in the court at that time that you had only seen a gun once in your life, do you remember that? A. Yes, sir.

Q. Now, then, I am asking you this— While sitting there, under oath, testifying, did you have in your mind present at the time the knowledge or the thought that you had seen three guns in 1936 in the Rosen murder, when you gave the answer you had only seen one gun once in your life?

Mr. Turkus: Objected to as already testified.

The Court: You have been all over that.

Mr. Turkus: I will recall it to your Honor. He said he testified—

Mr. Rosenthal: You don't have to recall it. Please don't. May I call your Honor's attention to this, that the thing that I asked him before was did he have in mind—I do not want to argue this, I just want to recall it to your mind—the only thing I asked him then was did he have in mind guns used in the stick-up. I had not come to any question on this particular murder. That was where my question was directed. Now I am asking did he also have in mind when he answered that question the guns he saw at the Rosen murder.

The Court: I have your recollection. Do not argue any further.

Mr. Rosenthal: Does your Honor sustain the objection?

3244

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The Court: Yes, it is repetitious.

Mr. Rosenthal: Exception.

Q. Now, was Al Glass, or Cherry, or Louis Glass, they are all the same, aren't they?

Mr. Turkus: Objected to as repetitious.

Q. Did he have anything to do with you in any of these stolen cars which you stole?

3245

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant, and as repetitious.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Mr. Rosenthal: May I ask, so that I do not pursue it further, is it sustained on the repetitious ground? Because I have not asked anything on that independently.

The Court: Sustained because it is irrelevant and because it impresses the court as fishing. The court referred to that yesterday. You said you did not know what the court meant.

3246

Mr. Rosenthal: I still don't see.

The Court: The court cannot permit collateral advantage to be taken in cross-examination.

Mr. Rosenthal: Any question I ask, I have a reason which will develop as the trial goes on and which becomes fruitless if I ask this man ahead of time, because it is evidenced by his answers that he will

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3247

change it as soon as he sees what I am after.

Mr. Turkus: That is reprehensible.

The Court: The court has ruled.

Mr. Rosenthal: Exception.

Q. Did you have any other partner besides Al Glass? A. Max Lachinsky was working for us.

Q. Was he a partner? A. He worked for us.

Q. Was he a partner?

3248

Mr. Turkus: Objected to.

Mr. Rosenthal: This is a foundation for impeachment on further testimony.

The Court: That is always a question of law. Objection sustained.

Q. Did Al Glass run away when you had a candy store, with your money?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: I don't know what it means. Objection overruled.

3249

Q. Did Al Glass ever run away with your money? A. No, sir.

Q. He was the only partner you had at that time, wasn't he?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

3250

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Q. Did you testify this way in the mountains, in the Cohen trial:

"Q. Does anybody owe you any money? A. Yes, sir.

"Q. Weren't you interested in finding out who owed you? A. I had a partner; he ran away.

"Q. What happened to him? A. I don't know.

"Q. Do you know where he is now? A. No, sir.

3251

"Q. Is he still alive? A. I don't know."

Were you asked those questions in the mountains and did you give those answers?

Mr. Turkus: I object to that as incompetent.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. When you were questioned in the mountains about your partner, did you mean Al Glass was your partner?

3252

Mr. Turkus: Objected to.

The Court: Sustained. Too far afield.

Mr. Rosenthal: This is all on the question of credibility, your Honor.

The Court: You can go on from now until Doomsday, but the Court must reasonably restrain. In this case a great deal of latitude is allowed as a matter of Court policy, but not without limit.

Q. Do you know Al Tannenbaum? A. Yes, sir.

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3253

Q. How long do you know him? A. Seven or eight years, sir.

Q. Did you ever go out with him any place?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Overruled. It may be preliminary to something.

A. Yes, sir.

Q. Did you ever steal automobiles with him?

3254

A. I beg pardon?

Q. Did you hear what I said? A. I did not understand you, sir.

Q. You don't understand what it means, what the question means when I ask you did you ever steal any automobiles with him?

Mr. Turkus: Objected to as argumentative.

Mr. Rosenthal: I asked him did he ever steal automobiles with Tannenbaum and he says he doesn't understand what I mean.

3255

The Court: We will take the evidence. He may have said he did not understand what you said.

Mr. Rosenthal: I wish I could stop Mr. Turkus. Before he said I yelled too loud. Now he says I drop my voice. I wish I could strike a happy medium.

Mr. Turkus: I wish you would. One minute you holler in my ear and the next minute I cannot hear you—one extreme to the other.

Mr. Rosenthal: Am I supposed to

3256

Sol Bernstein—For People—Cross

stand here and let him talk like a woman and not make an answer? I suppose it is in all men's homes, though, with the husband, anyway.

Mr. Turkus: You ought to know; I am a bachelor.

Mr. Rosenthal: Maybe if you were a married man you would behave yourself.

Mr. Turkus: I feel sorry for you.

3257

The Court: I don't know whether a record is made of all this, but I think it should be, in view of the fact that the Court is compelled to admonish from time to time. Otherwise the record will look queer unless it is explained. Now, what is the question.

(Last question repeated by the reporter.)

Q. (The Court) Did you and Tannenbaum steal automobiles together? A. No, sir.

3258

By Mr. Rosenthal:

Q. Did you ever go out with Tannenbaum on any criminal job, together? A. What do you mean, "criminal job"? Explain. I don't understand. That is a question I don't know how to answer. I really don't know how to answer.

Q. I will put it plainer to you: Were you ever in the company of Tannenbaum at any time that either he or you were committing any type of crime whatever, whether it is from disorderly conduct up to murder in the first degree? Is that clear to you?

Mr. Turkus: I object to the form of the question.

Mr. Rosenthal: He said he did not understand. Now I am making it plain to him.

By the Court:

Q. Did you ever commit crimes together with Tannenbaum—yes or no? A. I don't know how to say, your Honor.

3260

Q. Did you go on any jobs with him? A. Yes, sir.

By Mr. Rosenthal:

Q. Yes or no?

The Court: He says "Yes."

Q. You and Tannenbaum were in the same automobile or truck, or whatever it was that you testified to was the conveyance that carried away Yuran's body in nineteen hundred and whatever year it was? A. Yes, sir.

3261

Mr. Rosenthal: What is the year of Yuran's murder? Have you got it?

Mr. Turkus: I have a list of all of them.

Mr. Rosenthal: There he goes again.

The Court: What is the point?

Mr. Rosenthal: I simply asked him as a gentleman for the year of Yuran's murder, and he then makes a highly improper

3262

Sol Bernstein—For People—Cross

statement which has no connection with this case.

He can step up before your Honor and see whether he is admonished.

Mr. Turkus: I will accept the invitation.

Mr. Rosenthal: Then; all right, let us go up with the court's permission.

3263

The Court: Now, wait a minute. Please listen to the court at this time. The trial of a case is very difficult for a Judge because the Judge is human, and this situation tends to wear down anybody. The court has to maintain patience and poise at every moment of this trial. Therefore, it will certainly be indebted to both sides if the trial, from now on, will be conducted with some semblance of order.

Mr. Rosenthal: I will withdraw the request.

By Mr. Rosenthal:

3264

Q. When was the Yuran murder, I am asking you? A. 1937 or 1938.

Q. You are not sure of the year? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. You were up in the mountains when the Yuran murder was committed? A. Yes, sir.

Q. Where were you stopping in the mountains? A. The Oliver Hill Hotel.

Q. Where was that located? A. Woodbourne.

Q. How far is Woodbourne from Fallsburg?

A. About eight miles.

Q. And did you have your automobile with you at the time? A. Yes, sir.

Q. Were you accompanied by anybody in the mountains at the Oliver Hotel, is that it? A. The Oliver Hill Hotel.

Q. Were you stopping with anybody at the Oliver Hill Hotel? A. No, sir.

Q. Was anybody stopping at that hotel with you from Brooklyn? A. The owner of the hotel.

Q. What is the owner's name? A. Max Resnikoff.

Q. Who did you see at the time you got in the truck to dispose of the Yuran body, who were the people that were there? A. You mean all in the truck?

3266

Q. Yes, I want to know the names of all the men in the truck. A. Al Tannenbaum, Jack Drucker, myself and Harry Strauss.

Q. The Al Tannenbaum you refer to is the one that we just spoke about? A. Yes, sir.

Q. Before you got into the truck did you know that Al Tannenbaum was staying any place in the vicinity? A. Yes, sir.

Q. How long before the actual murder did you know that Al Tannenbaum was in that vicinity? A. What do you mean, I cannot understand you?

3267

Q. You cannot understand that? A. No, sir.

Q. You know the day Yuran was murdered? A. What do you mean, do I know the day?

By the Court:

Q. You were there when the body was still warm? A. Yes, sir, but I was not there when they murdered him.

3268

Sol Bernstein—For People—Cross

By Mr. Rosenthal:

Q. You know the day he was murdered, don't you?

By the Court:

Q. Was that truck the same one connected with the Druckman murder, in Brooklyn? A. I could not tell you that.

3269

The Court: According to reports—I understood the name Drucker was mixed up in that.

Mr. Rosenthal: I don't know.

By Mr. Rosenthal:

Q. How long before you saw this dead body did you know that Tannenbaum was up in the mountains, days, hours or weeks? A. I don't understand you, sir, I really don't understand you.

3270

Q. I will make it very plain so you do understand it.

Mr. Turkus: I object to the preamble, and I ask that it be stricken from the record.

Mr. Rosenthal: I am only replying to him. I will consent, to save the time of your Honor in ruling.

Q. You met Al Tannenbaum when you were carrying this dead body? A. Yes, sir.

Q. How long before you started to carry the

dead body, either in hours or days, did you know that Al Tannenbaum was in the mountains? A. I cannot explain it; I don't know what you mean.

By the Court:

Q. Before you found Tannenbaum on the truck did you know he was in the mountains? A. Oh, yes, sir.

By Mr. Rosenthal:

3272

Q. How long did you know he was in the mountains on that occasion? A. I understand what you mean now. They came over to my hotel, sir.

Q. Who is "they"? A. Al Strauss—I mean Harry Strauss, Jack Drucker, Al Tannenbaum; they came over to my hotel.

Q. When did they come over to your hotel, how long before the murder? A. I think about three days, sir.

Q. That is—I do not remember the names—it may be quicker to ask you—did Drucker, Strauss and Tannenbaum, the three come over? A. Yes, sir.

3273

Q. And they had a conversation with you in your hotel? A. No, sir, they just told me something.

Q. Did they have a talk with you in your hotel about this Yuran murder? A. No, sir.

Q. Had you told either Tannenbaum or Strauss or Drucker that you were over in the Oliver Hill Hotel before they came over to interview you there? A. They knew where I was.

Q. Had you told them? A. Oh, no, sir.

3274

Sol Bernstein—For People—Cröss

Q. Were they stopping in the same town, Woodbourne, that you were stopping in? A. No, sir.

Q. Where were they stopping? A. In the Plaza Hotel.

Q. In the same town? A. No, sir.

Q. Where is the Plaza Hotel? A. I think it is in Fallsburg.

Q. You know it is in Fallsburg, don't you?

A. I think it is Fallsburg.

3275 Q. Eight miles away from where you were stopping, is that true? A. I think so, sir.

Q. Did you see them between the time they had this conference with you three days before in the—

Mr. Rosenthal: Do not answer this question, Mr. Turkus is going to get up. But I now ask the court to tell him to sit down until I finish.

Mr. Turkus: Will your Honor instruct Mr. Rosenthal to not repeat anything to him that starts any discussion.

3276

The Court: Yes, forget that.

Mr. Rosenthal: I will withdraw the question.

Q. How long after this conference or talk that you had with them in your hotel was it before you next saw any one of these three men?

Mr. Turkus: I object to the question with the use of the word "conference". It contains a statement of facts not testified to by this witness.

Sol Bernstein—For People—Cross

3277

Mr. Rosenthal: I will withdraw it. I don't want your Honor to rule on it. I will put it in a different form.

The Court: It is not permissible on the trial of this issue to re-try the Gangi Cohen case. The most you can do with regard to the Gangi Cohen case is to impeach credibility by contradictions.

Mr. Rosenthal: This is in reference to the Yuran murder. I want to show this man is an accomplice to that murder. That is my purpose in asking this question.

3278

The Court: I understand Gangi Cohen is the man who was tried for the Yuran murder.

Mr. Rosenthal: No, it is a different murder entirely.

The Court: Who was tried for that?

Mr. Turkus: That indictment is pending. There is a fugitive there.

The Court: Then the court cannot allow any fishing.

3279

Mr. Rosenthal: I am trying to show—there is no fishing about names exposed here. He has exposed the names of three people in the truck and I am going to show that this man is an accomplice, and not, as he says, an undertaker burying a body after he was murdered, but that he was an accomplice.

The Court: For the court's information, let me have this—what was the name of the corpus delicti in the Cohen murder case?

3280

Sol Bernstein—For People—Cross

Mr. Turkus: Walter Sage, alias Walter the Polack.

The Court: The objection is sustained.

Mr. Rosenthal: Exception.

3281

Q. Did you see either Drucker, Tannenbaum or Harry Strauss, after they visited your hotel in Woodbourne, three days before the murder of Yuran, in between that time—the time of the murder and the first conversation you had with them, did you see them again? A. Yes, sir, they told me to go over some place, sir.

Q. Where was the next place you saw either Harry Strauss, Drucker or Tannenbaum, prior to the murder of Yuran? A. The Plaza Hotel.

Q. Is the Plaza Hotel their hotel, where they stopped? A. Yes, sir.

Q. When were you told to come over to the Plaza Hotel, where they stopped, how long before the murder of Yuran? A. That was the same day, I think; I think that was the same day, sir.

3282

The Court: Although no objection is made—this is what the court has reference to—I cannot rule because there is no objection, but it strikes me as having no legitimate purpose in this cross-examination, but as being in a sense, fishing for information concerning entirely different matters.

Mr. Rosenthal: I respectfully except to the Court's statement. May I state on the record that the only purpose in my mind that I have of all these names are public matters I am speaking about now.

He has already spoken about them under oath. I am impeaching his credibility on the question of whether or not he had ever been connected with or took any part in any other murder, other than the Rosen murder. This jury has a right to know whether or not he did or aided in the commission of any murders either prior or subsequent, in order to appraise what weight, if any, they will give his testimony. I am not bound by his statement.

3284

The Court: If the jury were not present, you would not address the Court in an angry tone.

Mr. Rosenthal: I am not angry.

The Court: Your attitude is surely such. Otherwise you are talking for the benefit of the jury. I call you to order for that.

Mr. Rosenthal: I except.

The Court: Next question.

Q. Did you see either Drucker, Strauss or Tannenbaum prior to the murder of Yuran? A. What do you mean, "prior to"? I don't know what you mean, sir.

3285

Q. (The Court) Before. A. No, sir. I met them over there the same day I stood at the hotel. They told me to hang around. That is all I know.

By Mr. Rosenthal:

Q. You were asked to come over to the hotel at what time of the day, to be there at what

3286

Sol Bernstein—For People—Cross

time of the day? A. I think it was about five or six o'clock at night.

Q. Were you asked to take your car along?
A. Yes, sir, I had to go with my car. It is about eight miles to get there.

Q. When you arrived there did you see them?
A. Yes, sir.

Q. Did they tell you that you should wait around? A. Yes, sir.

3287

Q. They just told you to wait there? A. Yes, sir.

Q. Didn't you say before, in answer to Judge Talley, that you were accidentally walking along in Fallsburgh, accidentally walking along the street in Fallsburgh, when you met these men? Isn't that what your testimony was on this stand in answer to Judge Talley when you were questioned about the Yuran murder? A. You don't understand me, sir.

Mr. Rosenthal: I ask the answer be stricken out as not responsive.

3288

Mr. Turkus: I ask that it stand.

The Witness: You don't understand.

Q. You don't understand. A. I said you don't understand.

The Court: What he said before, Counsellor, when Judge Talley was questioning him is that when the alleged victim was murdered, he came up after the murder. I don't recall whether he said, "accidentally." Maybe he did and maybe he did not. For goodness' sake, don't let that

delay things. Proceed with your examination.

Mr. Rosenthal: May I press the question?

The Court: I withdraw the last part of the remark to save time.

Q. Didn't you tell Judge Talley you knew nothing about the Yuran murder, but were accidentally walking along the street in Fallsburg when you met those men? A. Yes, sir.

3290

Q. And that was true? A. Yes, sir.

Q. What time were you "accidentally" walking along the street in Fallsburg when you met these men? A. I was walking with somebody.

Q. Who were you walking with? A. Jack Drucker, sir. You are getting off the line—I cannot explain it to you—I can explain it to you, but what you are telling me is wrong.

By the Court:

Q. What time of day did that happen? A. This it at night.

3291

Q. What time? A. Say about eleven or twelve o'clock at night.

Q. How far from the village of Fallsburg did you find them in this lot or field? A. I took a ride and then he told me to take a walk.

Q. Go ahead, please. A. Sometime at night, it was in the Plaza Hotel, Jack Drucker told me to take a ride with him. I took a ride with him. He told me to come and take a walk with him. I took a walk with him. On the road there was an alleyway and along came a car and inside was the dead body.

3292

Sol Bernstein—For People—Cross

Q. Before that did you know about it? A. No, sir.

Q. Did Drucker tell you? A. No, sir, he just told me to take a walk.

Q. Then you went, accompanied with Drucker, to assist in burying the body? A. No, sir, that was the next day.

Q. You acted as a lookout at the burial? A. No, sir. They dropped off the body. They went away with the car, with the dead man's car.

3293

Q. They left the body there? A. Yes, sir, me and Harry Strauss stood there all alone until they came back.

Q. The next day? A. That same night we took the body and hid it in the bushes and then that same night they started digging, but they could not make a hole.

Q. You had to get a pick? A. There was a pick there already. And the next day they came with the truck and then we took the body to the grave.

Q. How far away? A. That was in Loch Sheldrake.

3294

Q. How far away? A. I cannot tell you, because I was riding in the truck, I could not see it. It took about ten or fifteen minutes, maybe more.

Q. It was a short distance? A. Yes, sir, but I was riding in the truck and I could not see.

By Mr. Rosenthal:

Q. Is it your testimony you came with Drucker to a certain spot in your automobile? A. Oh, no, sir.

Q. In his automobile? A. Yes, sir.

Q. Then when you got to a certain spot

Drucker said, "Let us get out and take a walk"? A. What do you mean, "Let us get out and take a walk"? He stopped the car and said, "Come on, take a walk."

Q. Then while you were walking you saw Strauss come along with Drucker? A. Wait a minute. Just take it easy, sir. We got to the spot there. We stood a few minutes, and then came along the car.

Q. And in the car you discovered who? A. Who did I discover? What do you mean?

3296

Q. Who did you see? A. They pulled over the car.

Q. Who is "they" that pulled over the car? A. Al Tannenbaum, Harry Strauss, and another fellow was Simey, and the dead man.

Q. Then you, together with them, took the body and hid it in the bushes? A. Wait a minute, you are going too fast. When they dropped off the body they started digging, fixing a hole. Then when he could not dig to make a hole he hid it in the bushes.

3297

By the Court:

Q. You mean it was too rocky? A. I don't know what it is, but weeds or something.

By Mr. Rosenthal:

Q. Did you just tell Judge Taylor, when you were reciting it now, as to what happened, that "we" hid the body, using the words "we hid the body in the bushes"?

Mr. Turkus: Objected to as repetitious.

3298

Sol Bernstein—For People—Cross

By the Court:

Q. Who did hide it? A. We all did hide it; we all had a part.

Q. You were then in on the job? A. Yes, sir.

By Mr. Rosenthal:

3299

Q. But you had not been told by Drucker that the purpose you and he were to be there for was for the purpose of aiding the get-away and the murder, had you? A. No, sir.

Q. But after you hid the body you went with Strauss? A. I beg your pardon, sir?

Q. You went with Strauss, didn't you, after you hid the body? A. Wait a minute; either Jack Drucker came back with his car or Alie Tannenbaum came back with his car and they picked us up. I will tell you the whole thing. I will tell you everything. I will tell you what happened first.

3300

Q. Go ahead. A. When they dropped off the body and they could not dig a hole, I think that is when Harry Strauss went through his pockets and he found a lot of money there—I don't know how much, and then either Jack Drucker or Allie Tannenbaum came back with his car to pick us up there.

Q. Are you sure of that? A. Yes, sir.

Q. Didn't you just tell the Judge when you were reciting the story to him that when you found you could not dig you went away with Strauss, and Drucker and Tannenbaum drove the dead man's car away, didn't you say that to the Judge only three minutes ago?

Sol Bernstein—For People—Cross

3301

Mr. Turkus: I object to that as repetitious.

Mr. Rosenthal: This is on the question of impeachment; he has changed his story within three minutes after he told it to your Honor.

Mr. Turkus: I object to the summation in advance.

Mr. Rosenthal: I submit I am entitled to an answer to the question.

Mr. Turkus: I submit the witness has a right to tell the whole story.

3302

Mr. Rosenthal: I am not stopping him, but I am stopping him from telling a different story within three minutes of one another.

The Court: It is very easy for counsel and the Court to get confused. My own mind is clear as to what he did say. We are very far afield. The most you are entitled to in collateral impeachment is to get an admission of somebody else present, but you may not try the other issue in all its details. I mean to say it is within reason for the Court not to permit cross-examination on collateral details. I know examination on collateral details is permissible on the main issue within certain limitations, but not on collateral impeachment. I have got to put a stop to this somewhere, or there will be no end to the trial.

3303

Mr. Rosenthal: I respectfully except to your Honor's statement.

The Court: You have your admission of the unlawful disposition of the body.

3304

Sol Bernstein—For People—Cress

Mr. Rosenthal: May we come back ten minutes earlier? I would like the stenographer over recess to transcribe that for me.

The Court: No, I will stop you right here and now on that. I think it is reasonable and the Court will be sustained on it. It is too far afield.

3305

Mr. Rosenthal: I respectfully except to the Court's ruling. Now that my purpose is clear I am now asking this question—

The Court: Do not argue it, please. Take your exception and proceed with your examination.

Mr. Rosenthal: I will take exception.

The Court: Because today I will proceed until one o'clock. I have a long sentence calendar at two o'clock, and that work will take all afternoon, so we must now cover all the ground possible between now and one o'clock.

3306

Mr. Rosenthal: I have every desire to do so, but I have a duty to perform for my client.

The Court: Do not make speeches, then.

Q. Did you tell Judge Talley—

Mr. Barshay: I don't want to repeat it, but all this is subject to our objection which your Honor gave me from the moment this man started testifying.

The Court: Surely.

Q. You admitted using the name of Jackie Berman?

Mr. Turkus: I object to that as repetitious and also as to the form of the question.

Q. In answer to a question by Judge Talley you admitted using the name of Jackie Berman, when you were in Miami?

Mr. Turkus: I object to that as repetitious.

3308

Mr. Rosenthal: This is preliminary to an impeachment question.

Q. (The Court) Do you remember? A. Yes, sir.

Q. In the mountains, in the Gangi Cohen trial, were you asked these questions in respect to that proposition, and did you give these answers:

"Q. Did you ever use any name other than you own on any occasion? A. My own name.

3309

"Q. You were never afraid as to hiding your identity? A. No.

"Q. Never afraid? A. No.

"Q. That is the fact? A. Yes, sir."

Were those questions asked you in the trial of Gangi Cohen and did you give those answers? A. Yes, sir.

Q. That was not true, either? A. Yes, sir.

Q. What? A. It was not true, sir, yes, sir.

Q. In respect to Tannenbaum, were you asked in the trial of Gangi Cohen, in the mountains, these questions and did you give these answers:

3310

Sol Bernstein—For People—Cross _____

“Q. You knew him well, you knew Tannenbaum, and you passed him by—”

Well, I will repeat for you before that. This is in respect to meeting Tannenbaum in Miami. Do you recall testifying in the mountains about meeting him in Miami? A. Yes, sir.

Q. Now, in respect to that situation, were you asked these questions and did you give these answers:

3311

“Q. You knew him well, you knew Tannenbaum, and you passed him by? A. I did not know him so well.

“Q. You have known Tannenbaum for years? A. Never do business with him.

“Q. Then it is a passing acquaintance? A. That is right.”

Do you remember those questions being asked of you and those answers given? A. Yes, sir.

3312

Q. Did you mean when you told the jury in the Gangi Cohen case that you had a passing acquaintance with Tannenbaum that—I will withdraw it. Do you call a “passing acquaintance” with a man being with him right after a murder is committed and carting the body and burying it, et cetera, do you call that a “passing acquaintance”?

Mr. Turkus: I object to that as summation.

The Court: Sustained as argumentative.

Q. You told Judge Talley in this trial, at page 682, that when you went with the police to point out where the body of Yuran was buried, that you did not point out anything about the pick

or the axe, do you remember being asked by Judge Talley about that? A. Yes, sir.

Q. The fact is you did not point out to the police where the pick or the axe were buried, isn't that right? A. No, sir.

Q. In the trial in the mountains, in the Gangi Cohen trial at Monticello, were you asked these questions and did you make these answers:

"Q. Did you point out to the officers the place where the 32 calibre pistol and the axe and the pick were thrown and buried in connection with the Yuran murder?"

3314

Mr. Turkus: Read the objection.

Mr. Rosenthal: All right, I will read it, even though it is not material.

Mr. Turkus: It is very material.

Q. Were you asked this question and did you make this answer in the mountains in the Gangi Cohen trial:

"Q. Did you point out to the officers the place where the 32 calibre pistol and the axe and the pick were thrown and buried in connection with the Yuran murder?"

3315

"Mr. Dickerman: I object as an attempt to disclose evidence in another indictment now pending in this court.

"The Court: You may answer.

"Q. Did you or didn't you? A. I did."

A. Oh, you don't understand. I will explain if you want me to bring it out.

3316

Sol Bernstein—For People—Cross

By the Court:

Q. Were those questions asked and those answers made? A. Yes, sir, but I did not understand them, sir.

By Mr. Rosenthal:

Q. That was not true, was it? A. You don't let me explain.

3317

By the Court:

Q. Yes or no? A. You don't let me explain, sir. If it is in the book, I said it.

By Mr. Rosenthal:

Q. In your mind did you have— In June of 1940, before you were a witness in the Gangi Cohen trial in the mountains, did you have an idea of your own as to what the word "accomplice" to a murder meant?

3318

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. When you were questioned— Let me withdraw that. You told Judge Talley, didn't you, that Judge O'Dwyer and Captain Bals questioned you about five or six times, asked you questions, and you gave them answers? A. Yes, sir.

Q. You told Judge Talley when he asked you

questions that those questions and answers that were asked of you by Judge O'Dwyer and Captain Bals were asked before you became a witness in the Gangi Cohen trial. You have not been interviewed by them since? A. What do you mean, sir?

Q. All of the six interviews, or the five or six interviews in which questions were asked of you by Judge O'Dwyer and Captain Bals, and you made answers, were questions which were had before you took the stand as a witness in the mountains, is that right? A. No, sir.

3320

Q. Did they ask you questions since then? A. After the trial?

Q. Yes. A. Oh, sure, sir.

Q. Judge O'Dwyer asked you questions after? A. Yes, sir, Captain Bals, District Attorney Turkus, Mr. Klein.

Q. All of them asked questions? A. Not all at one time. They asked me questions and I answered them.

Q. Did you in the mountains, in 1940, in the Gangi Cohen trial, when you were asked— Let me withdraw that question. When you were first questioned by the District Attorney, after you had surrendered yourself, did you immediately tell him what you knew about the murder of Walter Sage; did you tell him that along with the other things you told him? A. No, sir.

3321

Q. You did not tell him a word about it? A. Nothing about Walter Sage, no, sir.

Q. How long after you had surrendered yourself was the first time you mentioned you knew something about Walter Sage, or you had helped—

3322

Sol Bernstein—For People—Cross

Mr. Turkus (Interrupting): I object to the form of the question.

The Court: Sustained as being too far afield.

Mr. Rosenthal: This is all preliminary to testimony under oath for the purpose of impeachment.

The Court: Do not argue, please.

Mr. Rosenthal: Exception.

3323

Q. Now, in June, when you were asked on the stand in the Gangi Cohen trial, in respect to whether the District Attorney had ever questioned you or not, were you asked these questions and did you give these answers:

"Q. And how many times were you questioned by the District Attorney in Brooklyn? A. How many times?

"Q. Can't you hear me? A. Just once I told him all I knew.

"Q. On that one occasion did you tell them everything you knew?

3324

"The Court: In Brooklyn?

"A. Yes, sir.

"Q. Was a stenographer present? A. No, sir.

"Q. You were talking to the District Attorney what you knew about murders, and there was not a stenographer present taking down what you were saying?"

We will leave the next question out, because it is subsequently sustained.

Mr. Turkus: Read the record right.

Sol Bernstein—For People—Cross

3325

Mr. Rosenthal: I object to any statement or inference from Mr. Turkus that I have not read the record right, and I defy him to tell me where at any time I did not read the record right. I am not taking any accusation from this man.

The Court: Won't you complete your question?

Mr. Rosenthal: I ask that his statement be stricken from the record.

The Court: All right, strike it out. Let us proceed. Finish your question. I am trying to follow it.

3326

Q. I will continue the question. Did you understand it as far as I have read? A. Very clearly, sir.

Q. "Q. How long did they question you in Brooklyn?"

Mr. Turkus: I object. There is something omitted.

Mr. Rosenthal: There is nothing omitted. There is an objection sustained, and when it is sustained the question is stricken out, as I understand the rulings of the Court. If the Court wants me to read it I will read it, but I will take the Court's ruling and not Mr. Turkus's.

3327

Mr. Turkus: You read the question but did not read on.

Mr. Rosenthal: I said it was sustained and stricken out and therefore I omitted the question; that is exactly what I said.

The Court: This all tends to confusion. Go ahead with the question.

3328

Sol Bernstein—For People—Cross

Q. "Q. How long did they question you in Brooklyn? A. They did question me. I told them what I knew.

"Q. "The Court: How long?

"A. "The Witness: An hour, I told them.

"Q. Who asked you the questions, Judge O'Dwyer? A. Captain Bals and Judge O'Dwyer.

"Q. And you told them everything you knew? A. Yes.

3329

"Q. You mean you went in and volunteered to give them everything you knew about murders, and you told them everything you knew? A. Yes."

Were you asked those questions and did you give those answers? A. Yes, sir.

Q. Now then, let me ask you, is it a fact that you were only spoken to-- Question withdrawn.

Q. Isn't it a fact you were only spoken to once before June of 1940 by Captain Bals or Judge O'Dwyer about any murders?

3330

Mr. Turkus: Objected to as repetitions.

The Court: Repetitious; also too far afield. Objection sustained.

f Mr. Rosenthal: Exception.

Q. Now, do you remember you were questioned about your knowledge of the Rosen murder while you were a witness in the Gangy Cohen trial in Monticello in June, 1940? Do you remember that? A. Yes, sir.

Q. Did you tell the jury in Monticello the truth in respect to your testimony regarding the Rosen murder—yes or no?

Sol Bernstein—For People—Cross

3331

Mr. Turkus: Objected to as repetitious and as already answered.

Mr. Rosenthal: I never even questioned him on this yet.

The Court: Objection overruled.

The Witness: What do you mean?

Mr. Rosenthal: I move to strike out the answer.

The Witness: I do not understand what you mean.

The Court: Mr. Rosenthal, what in the world has the trial in Monticello got to do with the Rosen case?

3332

Mr. Rosenthal: He said under oath what he knows about the Rosen case there, and I am quoting from his testimony as to his supposed knowledge of the Rosen case, in which he denied he had any complicity, in the mountains.

The Court: Come down to the point.

Mr. Rosenthal: That is the reason, I asked him first—I read to him and asked him whether he told the jury the truth in the Rosen case.

3333

Mr. Turkus: That is what I object to. It is repetition.

The Court: You have objected once and the Court has ruled. Let it go at that. The objection is sustained.

Mr. Rosenthal: Exception.

Q. Were you asked these questions in the Gangi Cohen trial in Monticello:

“Q. You never killed anybody, did you? A. No, sir.

3334

Sol Bernstein—For People—Cross

"Q. You never were a witness to a killing, were you? A. Witness to a killing? No, sir.

"Q. You never saw anyone killed? A. What do you mean, see?

"Q. Don't you know what "see" means? A. Means actually seeing a person get killed?

"Q. What did you see? A. I know something about it.

3335

"Mr. Dickerman: I object to any question of any other killing, as this witness may be a witness.

"Mr. Price: There is such a thing as credibility.

"The Court: You can ask as to any act that was his."

Were you asked those questions and did you give those answers? A. Yes, sir.

Q. After having given those answers, were you then asked these questions:

"Q. You are not an accessory or accomplice to any murder? A. That is right."

3336

Mr. Turkus: I object.

Mr. Rosenthal: Will you please sit down until I am finished with my question?

The Court: Let him finish it.

Q. Were you asked these questions and did you give these answers? A. My mind is very clear. Go ahead.

Q. "Q. You are not an accessory or accomplice to another murder? A. That is right.

"Q. And that is true? A. Yes.

“Q. And you have had nothing to do with any murder on any occasion? A. That is right.”

Did you answer those questions that way?

Mr. Turkus: I object. That is a legal question. “Accessory or accomplice.”

The Court: Sustained as to all except the last question and answer.

Q. Under the Court’s ruling I will repeat just this question:

“Q. And you have had nothing to do with any murder on any occasion? A. That is right.”

Were you asked that question and did you give that answer? A. Yes, sir.

Q. That was not true, was it? A. I can explain it.

Mr. Rosenthal: I ask the answer be stricken out as not responsive.

The Court: It is really arguing with the witness because the actual killing, according to his testimony here, he did not participate in, but he did participate, according to his admissions, in sitting in the car and in acting as an outside principal.

Mr. Rosenthal: And in stealing the car and in taking the plates, and in getting them there, bringing them there and bringing them away.

The Court: Pardon me. The answer given to the question you have just read in the other trial could be viewed as being meant to be true by the witness if he considered it referred to taking part in the actual shooting. It would be untrue

3340

Sol Bernstein—For People—Cross

in relation to his being a principal under Section 2 of the Penal Law, in the other work than killing. Therefore it is a matter of argument for the jury.

Mr. Rosenthal: I except to the Court's interpretation and its statement in the presence of this jury. My interpretation, without mentioning it, is entirely different.

3341

Mr. Talley: I wish to put on the record at this time our objection to your Honor's statement, our exception to the statement which you made, and for the withdrawal of a juror, and I move for a mistrial in view of your Honor's statement made at this point in the case.

The Court: I can see no sense in that, no sense whatever. The statement by the Court was fair; the man legally was a principal of his own admission in the Rosen murder, if the Rosen murder occurred as he testified. There is no prejudice about it.

3342

Mr. Talley: He testified.

The Court: Do not argue. The motion for the withdrawal of a juror and the declaration of a mistrial is denied.

Mr. Talley: I respectfully except to your Honor's refusal to allow me to reply to your Honor's statement.

The Court: Proceed, please.

By Mr. Rosenthal:

Q. Regarding the Rosen murder, were you asked these questions—page 61 of the minutes

in the Gangy Cohen trial in Monticello, and did you give these answers:

“Q. Did you know a man named Joseph Rosen? A. No, sir.

“Q. Did you ever hear that name? A. I know something about it.

“Q. About what? A. About Rosen.

“By the Court:

“Q. Did you say you did not know him personally? A. (The Witness) Yes.

3344

“Q. Did you know this man Rosen had a candy store? A. Did I know?

“Q. Yes, sir. A. Yes, sir.

“Q. Was that located at 725 Sutter Avenue, Brooklyn? A. I don't know the number, but I know it was on Sutter Avenue.

“Q. You know he was murdered in the candy store on September 13, 1936? A. I don't remember the date.

“Q. But you know that was the time, around that time? A. It could be.

“Q. Was it in 1936 he was murdered? A. I do not remember the year.

3345

“Q. Did you see him murdered? A. No.

“Q. Did you have any part in that murder? A. I don't know what it was all about.

“Q. Did you testify in the Grand Jury about that murder? A. Yes, sir.

“Q. The District Attorney put you in the Grand Jury as a witness in the Joseph Rosen murder, and you tell this jury now you don't know what it was all about? A. Yes, I know now about it.

3346

Sol Bernstein—For People—Cross

“Q. Were you with Rosen at the time he was killed? A. No, sir.”

Were you asked those questions and did you make those answers?

Mr. Turkus: I object to that, there being nothing inconsistent.

The Court: Sustained. No contradiction.

3347

Mr. Rosenthal: I respectfully except to the Court's ruling and the statement of the Court there is no contradiction.

The Court: The statement is withdrawn. The jury will disregard it.

Q. When you were in California in 1940 did anybody know you were there? A. Yes, sir.

Q. Who knew you were there? A. Louis and Al.

Q. What is the name of Al, the last name? A. Do I have to tell that, your Honor?

3348

The Court: If there is any objection—For some reason the witness does not wish to answer the question. I cannot rule because there is no objection.

Mr. Rosenthal: Question withdrawn.

Q. Were you asked in respect to these supposed friends of yours in the trial of Gangy Cohen? A. They asked me who knew I was in California.

Q. You said you did not know the names of the men that knew—did you say that?

Sol Bernstein—For People—Cross

3349

Mr. Turkus: I object. That is not inconsistent with anything here.

Mr. Rosenthal: I will withdraw it.

Q. When you had this candy store, wasn't that a blind for the Ali Baba gang?

Mr. Turkus: I object. That was asked by Judge Talley.

A. Ali Baga gang?

3350

Q. Well, let us see. Did you know a man named Jacob Eisman (?), otherwise known as Baby Face?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

Mr. Rosenthal: This is on the question of his credibility.

The Court: Overruled. It may lead to something.

A. I knew Eisman, yes, sir.

Q. You knew him as Baby Face, didn't you?

3351

A. I don't know what you mean.

Q. (The Court) Yes or no? A. No, sir.

Q. Did you know a man named Abie Goldberg, with an alias of Whitey? A. No, sir.

Q. You never heard of that name, is that right?

Mr. Turkus: I object to the question, whether he ever heard.

The Court: Objection sustained.

3352

Sol Bernstein—For People—Cross

Q. Did you know Willie Rosenson? A. I have heard that name.

Q. You heard of that name, didn't you, you know who Willie Rosenson is? A. I heard of that name.

Q. Do you know him, beside hearing of him by name? A. I must have.

Q. Did you hear of Willie Rosenson, outside of hearing his name? A. Yes, sir.

3353

Mr. Turkus: I object.

Q. Was he known by the alias, by the name of Punchy Willie, or something like that?

Mr. Turkus: Objected to as incompetent and irrelevant.

Mr. Rosenthal: I will show the competency—that this man is not telling the truth in anything he says here, that his purpose—

3354

Mr. Turkus: I object to Mr. Rosenthal making an advance summation to the jury, injecting improper and reprehensible remarks.

The Court: This means nothing at the present time, but it may mean something later. Objection overruled.

Mr. Rosenthal: I object to the speech, making those voluntary remarks.

Mr. Turkus: I am always asked to be admonished if I make any form of an objection. Yet we have defense counsel doing the most reprehensible things. Now, I ask that they be admonished.

Sol Bernstein—For People—Cross

3355

The Court: I am always admonishing both sides.

Mr. Rosenthal: I accept the admonition of the court.

The Court: It is understood that throughout the rest of the trial all admonitions apply to all counsel.

Q. Both of those men were confirmed criminals, weren't they?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

3356

Mr. Rosenthal: I withdraw the question.

By the Court:

Q. At the time of your association, if you had any, did you know that they were crooks? A. I don't know what he is talking about, Judge.

By Mr. Rosenthal:

3357

Q. Do you know Irving Shenker, otherwise known as Faker? A. I know there is a Shenker.

Q. Did you associate with him? A. He came around the store.

Q. The store you kept as a blind? A. Yes, sir.

Q. Did you know Sam Nagur, also known as Mitch? A. No, sir.

Q. Did you know Max Moskowitz? A. Yes, sir.

3358

Sol Bernstein—For People—Cross

Q. Did he come around the store, too? A. Yes, sir.

Q. Did you know Eisman?

Mr. Turkus: Objected to as repetitious.

Q. The Eisman I mean is the man who was arrested for killing a policeman and convicted; did you know him?

3359

Mr. Turkus: I object.

Mr. Rosenthal: I will show his association whether he likes it or not.

The Court: The court will now take a recess. On account of sentencing this afternoon, and I have quite a calendar, the court will recess until tomorrow morning at ten o'clock. Gentlemen of the jury, let no one talk to you about the case, keep your minds open, remember the admonition given you previously, which follows throughout the trial.

3360

The Court: The witness may pass out first. Now, the jury may retire. Defendants remanded.

(Recess until 10:00 A. M., October 30, 1941.)

Brooklyn, N. Y., October 30, 1941.

TRIAL RESUMED

SOL BERNSTEIN, a witness for the People, resumed the stand and testified further as follows:

Cross-examination by Mr. Rosenthal (continued):

Q. Just before recess yesterday I was asking you about the names of certain individuals and whether they hung out in this store you kept as a blind; do you recall that? A. Yes, sir.

3362

Q. Did you know a man by the name of Eiseman? A. Yes, sir.

Q. Was he known as "Baby Face"? A. No, sir.

Q. Was his first name Jake Eiseman? A. No, sir.

Q. What was his first name? A. Nat Eiseman.

Q. Did he hang out in this store of yours? A. Yes, sir.

3363

Q. Was he a professional burglar? A. No, sir.

Q. Was he a thief? A. No, sir.

Q. Did you know a man named Harry Stein? A. Yes, sir.

Q. Did he hang out in your store? A. Yes, sir.

Q. Was he a thief? A. Yes, sir.

Q. Do you know a man named Red Rabiner? A. Yes, sir.

Q. Did he hang out in your store? A. No, sir.

3364

Sol Bernstein—For People—Cross

Q. How long have you known him? A. I went to school with him.

Q. Was he a thief also? A. Yes, sir.

Q. Do you know a man called Big Dick? A. Yes, sir.

Q. Did he hang out in your store? A. No, sir.

Q. How long had you known him? A. I went to school with him, sir.

Q. Is he another thief? A. Yes, sir.

Q. Do you know a man called Ridge? A. No, sir.

3365

Q. Do you know a man named Wick Horowitz, otherwise known as "Wick"? A. No, sir.

Q. Is it not a fact that these men that hung out in your store, whom you say were thieves, were known as the Ali Baba gang? A. No, sir.

Q. You never heard of the name "Ali Baba Gang" before you got on the stand?

Mr. Turkus: Objected to as repetitious.

Mr. Rosenthal: Judge Talley asked about that; I did not.

3366

The Court: He may answer.

Q. (The Court) Did you ever hear of them? A. No, sir.

Q. Do you know you were known as The Chief?

Mr. Turkus: Objected to as already answered.

Q. Were you known as— Or were you known by any other name besides the names you gave, Jake Berman and Sol, Scholem, Bernstein? A. There might have been some other names too.

Q. Don't you know you were known by other names?

Mr. Turkus: I object unless the time is fixed.

Mr. Rosenthal: I can only ask one question at a time. I will ask him that.

The Court: You might ask him specifically as to some other names.

Q. Can you give this jury any other name you were known by, and the times you were known by other names? A. I don't understand what you mean.

3368

Q. You said you might have been known by other names besides Bernstein, Scholem, and Jacky Berman. A. Yes, sir.

Q. Now what other names, can you give us any of them that you were known by, and can you tell us during what years you were known by those names? A. When I checked in sometimes to a hotel, sir.

Q. When you were traveling the country, you mean, with carnivals? A. No, sir.

3369

Q. When you were traveling around the country in those years you went on a vacation, you mean? A. I don't understand what you mean, sir.

Q. You say you checked in a hotel sometimes and gave fictitious names. Did you say that just now? A. Yes, sir.

Q. Did you do that in 1936? A. No, sir.

Q. Or in 1937? A. I cannot recall, sir.

Q. In 1938? A. It might have been, sir.

Q. And in 1939? A. It might have been, sir.

Q. What is your best recollection? Is that the

3370

Sol Bernstein—For People—Cross

best you can tell us, "It might have been"? A. I went under, maybe once or twice in a hotel, under different names, but I do not recollect, sir.

Q. Frank Cooperman was another friend of yours? A. Yes, sir.

Q. Do you know a man named Arkie Cohen? A. Yes, sir.

Q. How long did you know him? A. About ten years, sir.

Q. Is he another thief? A. No, sir.

3371

Q. Is he a loan shark man? A. He is an electrician, sir.

Q. Is he a friend of yours? A. Yes, sir.

Q. Did you see Arkie Cohen while you were with Fat Cooperman the night that Fat Cooperman was killed in his doorway?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant; we have gone over that; this is repetitious.

Mr. Rosenthal: I have not asked a question about this. I am now cross-examining in behalf of the defendant Capone.

3372

The Court: Do not argue. Objection overruled.

Q. Did you understand the question? A. Yes, sir.

Q. Answer it. A. I may have.

Q. Didn't you have a talk with Arkie Cohen—
Question withdrawn.

Q. Didn't Arkie Cohen want to go in a car with you and Fat Cooperman that night, and didn't you tell him not to go in the car with you because Fat Cooperman was going to be killed?

A. No, sir.

Q. You did pick up Fat Cooperman and drive him to his doorway? A. Yes, sir.

Q. How long after you deposited him at his doorway was it before you heard that Fat Cooperman had been killed in that doorway? A. The next day, sir.

By the Court:

Q. How long ago was that? A. A good many years ago, sir.

Q. Did that have some connection with the Kauffman chicken market murder? A. No, sir.

Q. In Sullivan County? A. No, sir. Explain again, sir.

Q. Was that a chicken market murder? A. No, sir.

By Mr. Rosenthal:

Q. Did you accidentally meet Fat Cooperman?

Mr. Turkus: Will you wait just a minute, sir?

(Mr. Turkus appears before the bench and talks privately to the Judge, without the hearing of the jury.)

(Mr. Turkus resumes his place in the court-room.)

Q. Did you accidentally meet Fat Cooperman that night and take him home? A. No, sir. I met him in the cafeteria. If you want to know who killed him I can tell you, if you want to know who killed him, if you want to know that,

3376

Sol Bernstein—For People—Cross

Mr. Rosenthal: I ask that be stricken out.

The Court: Strike it out.

Mr. Rosenthal: Now, for about the eighth time I ask your Honor, in view of the fact we had another recess, that this individual be told to answer questions only.

The Court: Yes.

3377

Q. Did you understand what the Judge told you? A. Yes, sir.

Q. You have been told that now seven times, haven't you?

Mr. Turkus: I object. Just a minute. Admonitions come from Judge Taylor and are satisfactory.

Mr. Rosenthal: I have a right to question this man as to whether he understood what he has been told seven times in the last few days.

3378

Mr. Turkus: He is willing to tell you everything.

Mr. Rosenthal: I ask that that be stricken out. If it is to be a repetition of what we have had on other days, he is going to have his answer. I ask your Honor to tell Mr. Turkus that he has no more right than this man has to make statements in the presence of this jury.

Mr. Turkus: That goes for Mr. Rosenthal.

Mr. Rosenthal: It goes for everybody in this court-room.

Sol Bernstein—For People—Cross

3379

Mr. Turkus: But this time I am addressing my remark to you.

The Court: Well, that is all over.

Mr. Turkus: As far as I am concerned it has subsided.

Mr. Rosenthal: May I have an instruction made to Mr. Turkus not to make statements in the presence of the jury?

The Court: All right.

Q. Did you understand the Court's—I am talking to you, Bernstein—

3380

The Court: Don't quiz him about the Court's admonition.

Mr. Rosenthal: I will accept the Court's ruling as to that, but I respectfully except.

Q. Did you accidentally meet Fat Cooperman that night in a cafeteria, when you took him home—yes or no?

Mr. Turkus: I object to that as repetitious. He has just answered.

3381

Mr. Rosenthal: The answer has been stricken by the Court as not responsive.

The Court: Objection overruled.

A. No, sir, he was in Witty's cafeteria on Pitkin and Douglass.

By the Court:

Q. He was killed on Snyder Avenue, wasn't he? A. Yes, sir.

Q. Around East 59th Street? A. Yes, sir.

3382

Sol Bernstein—For People—Cross

By Mr. Rosenthal:

Q. That is the place where you let him off?

A. Yes, sir.

By the Court:

Q. And if the District Attorney wants to find out who did it— A. (interrupting) I will tell him, sir.

3383

The Court: All right, there is plenty of time.

By Mr. Rosenthal:

Q. You told Judge Talley that you did not know anything about the fact of the Cooperman murder whatever until the next morning, didn't you, when he asked you the question yesterday when he was examining you—yes or no?

3384

Mr. Turkus: I object, that is just what he said today. This is not inconsistent.

Mr. Rosenthal: If we accept Mr. Turkus's answer, I withdraw the question.

Q. How long did you know Seymour Magoon?

A. About eight or nine years, sir.

Q. Did he frequent the store you ran as a blind? A. No, sir.

Q. Did he frequent the Coffee Pot that you mentioned at Amboy and Sutter? A. I seen him lots of times there, sir.

Q. Did Mugsy Cohen visit your store? A.

Yes, sir, hung around in the store, in the same store.

Q. At the time that Muggsy Cohen was hanging around in your store you knew him as a first class radio and automobile thief?

Mr. Turkus: Objected to as repetitions; we have had his accomplishments related already.

Mr. Rosenthal: I have not asked any questions on anything I am asking today. What Judge Talley or Mr. Turkus may have asked him—

3386

The Court: (interrupting) Please do not argue. The objection is overruled.

Q. Do you remember the question? A. Yes, sir.

Q. Is your answer "Yes, sir"? A. He was the best in the business, sir.

Q. When you testified in Monticello, it was in June of 1940, wasn't it? A. Yes, sir.

Q. You had previously testified in Kings County before the Grand Jury in the Rosen case, hadn't you? A. Yes, sir.

3387

Q. And subsequent or after your testimony in Monticello did you ever testify before the Grand Jury again in Brooklyn about the Rosen case? A. Just once, sir.

Q. That once was prior to the time you swore as a witness in the Cohen trial in Monticello, is that right? A. Yes, sir.

Q. Now, you told Judge Talley that you were told by someone in the District Attorney's office not to give any information— I will withdraw

3388

Sol Bernstein—For People—Cross

that and give your exact words—you told Judge Talley that (on page 682) you did not tell the truth in Monticello because you did not want to give any information? A. All of it, no, sir. I told the truth about the Gangy case; everything was the truth, sir.

Mr. Rosenthal: I move to strike that out as not responsive.

3389

Mr. Turkus: I ask that it stand; it is most responsive.

The Court: Let it stand.

Mr. Rosenthal: Exception.

Q. Were you asked this question and did you give this answer (page 682):

"Q. You did not tell the truth in Monticello, did you? A. Because I don't want to give no information."

Were you asked that question and did you give that answer?

3390

Mr. Turkus: Objected to as repetitions and not inconsistent with his testimony in response to Mr. Rosenthal's questions.

Q. Were you asked that question and did you give that answer? A. I went to testify in the Gangy case and not in the other case.

Mr. Rosenthal: I move to strike that out as not responsive.

Mr. Turkus: Consented to.

The Court: Of course, Mr. Rosenthal, you know that is part of the record in this case.

Sol Bernstein—For People—Cross

3391

Mr. Rosenthal: Yes, I know that.

The Court: It is not customary, after the witness has been asked a question and given an answer, to later on take time to ask him if that question were true and that answer given in the same case unless he makes a contradiction.

Mr. Rosenthal: That was not asked by me. And it is preliminary.

The Court: Just the same, it is part of the record. Go ahead with your next question and we will avoid loss of time.

3392

Mr. Rosenthal: Does your Honor strike the answer out.

The Court: I am making it as a suggestion. Every time the Court makes a suggestion it is time lost and the Court means to save that.

Mr. Rosenthal: I accept the suggestion, but there is an answer which I ask the Court to strike out before I continue.

The Court: Let it stand.

Mr. Rosenthal: Exception.

3393

Q. Where was the conversation you had with the man in the District Attorney's office who spoke to you about giving no information? Where was that had?

Mr. Turkus: I object. That is not testimony.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Didn't you tell Judge Talley you had been told by a man in the District Attorney's office

3394

Sol Bernstein—For People—Cross

not to give any information? Did you tell that to Judge Talley?

Mr. Turkus: I object. That has just been sustained.

Mr. Rosenthal: I have not asked that before.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

3395

Q. Can you tell this jury the name of any individual attached to either the Brooklyn District Attorney's office or the District Attorney's office in Monticello who told you what you related to Judge Talley regarding not giving information?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. You were asked by Judge Talley at page 638, these questions:

3396

"Q. Did you tell the District Attorney that you were going to testify falsely because all the mob were not picked up? A. What did you say, sir?"

Then the question was repeated, and your answer: "A. I was told not to talk about any other case.

"Q. Who told you that? A. Somebody in the District Attorney's office. I don't recall who. I didn't tell all of the truth up there, sir."

Do you recall those questions being asked you and your giving those answers?

Mr. Turkus: Objected to.

Sol Bernstein—For People—Cross

3397

The Court: Objection sustained.

Mr. Rosenthal: This is preliminary to my asking another question.

The Court: It is just a waste of time; it is already part of the record in this case.

Mr. Rosenthal: It is preliminary.

The Court: Don't argue that. This is elementary and I am surprised you do this.

Q. Can you tell me in which District Attorney's office this conversation which you told Judge Talley about took place?

3398

Mr. Turkus: Objected to as already answered and repetitious.

Mr. Rosenthal: It is not contained in the record, if your Honor will look. Judge Talley did not ask in which District Attorney's office the conversation took place or where it took place, and that is what I am asking him.

Mr. Turkus: The answer, he said, was "I don't recall."

3399

The Court: The rule as to impeachment entitles you to inquire as to whether or not any witness who goes on the stand has committed perjury on another occasion. There it stops. You are not permitted to go on a fishing excursion along the lines of an admission. The record is complete then on that point and it may not be pursued any further than to get the admission. Objection sustained.

3400

Sol Bernstein—For People—Cross

Mr. Rosenthal: I respectfully except to your Honor's remarks.

The Court: It is elementary law; it is not a remark. It is a ruling, and I am telling you the law because you do not seem to know it.

Mr. Rosenthal: I respectfully except to that remark.

3401

Q. Did you know Abie Reles's brother? A. No, sir.

Q. You never knew a man named Sandy Reles? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. Now, in 1938, when you applied for a loan, did you give the name of a man, Herman Schaet as your employer, residing at 365 East 98th Street? A. Yes, sir.

Q. Did you ever work for Schaet? A. No, sir.

Q. Did you also at that time say you worked for Schaet as a salesman? A. Yes, sir.

Q. That was not true either? A. No, sir.

3402

Q. Schaet is a brother-in-law of your partner Cherry, isn't he? A. Yes, sir.

Mr. Turkus: I object. What difference does it make?

The Court: Objection sustained.

The Witness: I paid him off the loans.

Q. Are you finished? Didn't you go out to California— Question withdrawn.

Q. Didn't Meyers, the man who was endorser on your note or notes, leave and go to California in 1938?

Sol Bernstein—For People—Cross

3403

Mr. Turkus: I object.

Mr. Rosenthal: He has made responses. They are on the record, and I will show it is not a fact.

Mr. Turkus: I ask Mr. Rosenthal's remarks not only be stricker from the record but the jury instructed to disregard them. They are not testimony.

The Court: I do not think the jury needs instruction.

3404

Q. Didn't you on one of your trips to California go to see this man Meyers who had previously endorsed the notes for you?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Didn't you and Cherry, your partner, kill a man named Silverman? A. What do you say?

Q. You heard me, didn't you? A. I did not hear you, sir.

Q. I will repeat it. Didn't you and your partner Cherry kill a man named Silverman? A. No, sir.

3405

Q. Did you know a man named Silverman? A. Yes, sir.

Q. Was he a stick-up man? A. Yes, sir.

Q. How long had you known Mr. Silverman? A. Six or seven years, sir.

Q. Was Silverman killed? A. Yes, sir.

Q. When was he killed? A. I don't know, sir.

Q. Approximately, was he killed after you knew him or before you knew him?

3406

Sol Bernstein—For People—Cross

Mr. Turkus: I object. How could he be killed before he knew him? That is ridiculous.

Mr. Rosenthal: He might have heard of it.

Mr. Turkus: I object on the ground it is ridiculous to know a man after he was killed.

The Court: Objection sustained.

3407

Q How long before he was killed did you know Silverman? A. I knew him seven or eight years.

Q Was he out on stick-ups with you? A. No, sir.

Q Now, you owned an automobile in 1936, didn't you?

Mr. Turkus: Objected to as repetitious.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

I have not touched anything about 1936 your Honor.

3408

The Court: It is on the record that he did. Why waste time.

Q You said you sold that automobile in order to pay loan sharks; is that what you testified to?

Mr. Turkus: I object.

Mr. Rosenthal: This is preliminary to questions that have not been touched upon for the purpose of impeachment. I can only bring his attention by asking certain questions that have been previously asked so as to obtain a contradiction.

Sol Bernstein—For People—Cross

3409

The Court: I cannot see it. It is very far afield. Objection sustained.

Mr. Rosenthal: Exception.

Q. Is it not a fact that you had your car stolen in 1936, this car you owned? A. Yes, sir, I think so, yes, sir. It was stolen, yes, sir.

The Court: Now, counsel did not ask you that. He asked you did you have it stolen.

The Witness: No, sir.

3410

Q. It was insured, wasn't it? A. Yes, sir.

Q. You hired a lawyer by the name of—Aaron Babrow? A. Yes, sir.

Q. And sued the insurance company? A. I don't know what you mean by to sue the insurance company.

Mr. Turkus: I object to that as incompetent, immaterial and irrelevant; nothing to do with the Rosen killing.

The Court: Do not argue. Objection sustained.

3411

Mr. Rosenthal: Exception.

Q. Is it a fact, as you testified when asked by Judge Talley, that your 1936 car was sold by you to pay loan sharks off, or is it a fact it was stolen away from you by somebody?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

3412

Sol Bernstein--For People--Cross

Q. Was this car of 1936 registered in your name? A. No, sir.

Q. In whose name was it registered? A. I think it was under Al Glass, sir.

Q. You had the car registered subsequently in somebody else's name, didn't you?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant, having nothing to do with the Rosen killing.

3413

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Now, I am speaking, Mr. Bernstein. Do you mind looking in my direction when I address you? A. I am sorry, sir.

Q. Didn't you see Al Glass in the District Attorney's office in Brooklyn only a couple of weeks ago? A. No, sir.

Q. Have you ever seen him in the District Attorney's office since you have been in jail?

3414

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Sustained as irrelevant.

Mr. Rosenthal: Exception.

Q. You testified in answer to Mr. Turkus that you left Brooklyn when Judge O'Dwyer became District Attorney, is that right?

Mr. Turkus: I object, that was not the answer. He said when Judge O'Dwyer did something he left town. I don't want to repeat it.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Sol Bernstein—For People—Cross

3415

Q. Did you leave Brooklyn when certain men were arrested for disorderly conduct? A. When he declared war on the mob he kept pinching everybody, and I ran to Florida.

Q. You mean by "pinching," arresting for disorderly conduct, isn't that what you mean?

Mr. Turkus: I object. It speaks for itself.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

3416

Q. You had gone to Florida every year at the same time, hadn't you, for the last six years?

Mr. Turkus: I object. That does not take anything away from why he left on that trip.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

May I direct the Court's attention to the fact that these are matters brought out by the District Attorney?

The Court: We are wasting time. Proceed.

3417

Mr. Rosenthal: I respectfully except.

Q. Were you in Florida in 1937 around the month of February?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

3418

Sol Bernstein—For People—Cross

Q. Did you stop at the Hotel Nassau around the beginning of the year 1938—1939, in Florida?

Mr. Turkus: Objected to as repetitious, and incompetent, immaterial, and irrelevant.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

3419

Q. You said you were in Miami in 1940, in answer to Mr. Turkus, and then left in the month of March to go some other place. A. I went in to Brooklyn to see a lawyer, Manny Rosenberg and Fischbein was there, too, in Brooklyn.

By the Court:

Q. You mean Mr. Rosenberg? A. And Mr. Fischbein was there too, in Manny Rosenberg's house.

Q. You mean Mr. Rosenberg who is Mr. Rosenthal's associate? A. Yes, sir, Fischbein was there too.

3420

Q. He was your lawyer then? A. Yes, sir, both.

By Mr. Rosenthal:

Q. Look at Mr. Fischbein—you saw Mr. Fischbein in 1940? A. Yes, sir.

Q. Is that what you say? A. Yes, sir.

By the Court:

Q. Was he your regular lawyer? A. Yes, sir.

Q. How many years?

Sol Bernstein—For People—Cross

3421

Mr. Rosenthal: I object.

A. Quite many years, sir.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

I am waiting for the witness to turn toward me.

The Court: He does not have to.

Mr. Rosenthal: I submit, when I am asking a question I am entitled to all of the witness' attention.

3422

The Court: There is no law on that point.

Mr. Rosenthal: I respectfully except.

By Mr. Rosenthal:

Q. Wasn't Detective Laurie, of the District Attorney's office, and Detective Joseph, of the District Attorney's office, right there in the same hotel with you, in February—yes or no? A. In the Commodore Hotel, yes, sir.

Q. Didn't you often see them and take sun baths with them in the Commodore Hotel in February of 1940? A. Take it easy.

3423

Q. You take it easy. A. No, sir. Take it easy, sir.

Q. Did you see them in the hotel?

Mr. Turkus: Objected as repetitious.

The Court: I don't see what it has to do with the case.

Mr. Turkus: That was just venomous.

Mr. Rosenthal: What it has to do with the case is the statement of this witness,

3424

Sol Bernstein—For People—Cross

which I ask be stricken out, in response to your Honor's question.

The Court: All right, maybe I made a mistake, but I don't recall what you are talking about.

Q. Did you see Detective Walter Laurie of the District Attorney's office in the Commodore Hotel in February or March of 1940 before you left and came to New York—yes or no?

3425

Mr. Turkus: Objected to as already answered.

The Court: It has nothing to do with the case. Objection sustained. It makes no difference what hotels the detectives went to or whether they took sun baths or whether they even dined or swam in the luxurious Rooney Plaza.

Mr. Turkus: Detectives have business to be mingling with certain people.

Mr. Rosenthal: Again we have a statement.

3426

Mr. Turkus: I don't want any detective venomously assailed in a court-room if I can stop it.

The Court: It has no bearing on anything. Every Miami hotel usually has a couple of New York detectives during the season. That has been going on for a good many years. It is a matter of common knowledge.

Mr. Rosenthal: May we have Mr. Turkus's statement stricken from the record and the jury instructed to disregard it?

Sol Bernstein—For People—Cross

3427

The Court: There is no such law as that.

Mr. Rosenthal: I ask the jury be instructed to disregard it.

The Court: If the Court's jurisdiction is controlling, counsel should use different methods. Proceed.

Mr. Rosenthal: I respectfully except to your Honor's refusal to advise the jury to disregard it.

3428

Q. Before you gave yourself up had you learned that Mr. Abie Reles had spoken to the District Attorney from newspapers or any source—I will withdraw that.

Q. Had you read in the newspapers before you walked into the District Attorney's office about Abie Reles having spoken to the District Attorney—yes or no? A. Yes, sir, the papers were filled with the story.

Mr. Rosenthal: I ask your Honor to instruct this man when he answers yes or no not to continue and volunteer information.

3429

The Court: Yes.

By the Court:

Q. Did you read the Miami Herald when you were there? A. Yes, sir.

Q. Did it carry stories of Judge O'Dwyer's investigation in Brooklyn? A. Yes, sir.

Q. Large, first-page stories? A. Yes, sir. That was about Dukey Maffetore, sir.

3430

Sol Bernstein--For People--Cross

Q. Is that a daily paper? A. Yes, an outstanding paper.

Mr. Rosenthal: Will your Honor again instruct this witness not to volunteer after he has finished an answer?

The Court: Yes.

By Mr. Rosenthal:

3431

Q. Did you speak to anybody attached to the District Attorney's office since you left the stand yesterday? A. The District Attorney's office?

Q. Yes. A. No, sir.

Q. Has your wife been receiving any money since you are in jail?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Q. From the City of New York, has your wife been receiving \$50 every two months since the time you are in jail?

3422

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Did you have any other visitors outside of your wife coming into the hotel or wherever you were kept, to see you? A. I am here close to twenty months.

Q. Did you have other visitors coming to see you? A. No, sir.

Q. Are you now charged with any crime, as you are sitting on this stand? Is there any

chargé against you outside of being held as a material witness as you are sitting here in this court? A. No, sir.

Q. Do you know what the word "immunity" means? A. Yes, sir.

Q. You know that that means, then, that you cannot be prosecuted for a particular crime where you are permitted to testify—do you know that? A. Yes, sir.

Q. How long have you known that? A. A long time.

3434

Q. You knew it before you gave yourself up, didn't you? A. Yes, sir.

Q. So at the time you went to the District Attorney's office in 1940, you knew that if you were permitted to testify in any proceeding of which you were a part, that you could not be prosecuted unless you would sign a paper waiving immunity? A. I did not know what was going to happen to me.

Q. I will repeat the question. You say you knew what the word "immunity" meant for a long period of time? A. Yes, sir.

3435

Mr. Turkus: I object to it, as fully covered.

The Court: That is what he said.

Q. You knew what immunity was before you testified in the mountains, didn't you?

Mr. Turkus: Objected to as repetitious.

The Court: Objection overruled.

Mr. Turkus: If he knew it before he was arrested he knew it subsequent.

3436

Sol Bernstein--For People--Cross

Q. Did you know it before the Gangy Cohen trial? A. I knew the meaning of immunity, but I did not know what was going to happen to me.

Mr. Rosenthal: To save time I will come back to that.

Q. You did not sign any waiver in this case here, did you? A. No, sir.

3437

Q. You did not sign any waiver in the Yuran murder, did you?

Mr. Turkus: Objected to, he was not a party to that.

Mr. Rosenthal: I again submit that Mr. Turkus is again injecting, and as long as he is I have a right to say this—that it is for this jury to determine from his testimony whether he was a party to it or not, and not for Mr. Turkus to tell them.

3438

The Court: As far as the Yuran murder is concerned, the Court holds that this is too far afield and not retriable. Objection sustained. You are permitted to go into the question as to whether or not this man committed perjury in the Yuran murder, and there it stops.

Mr. Turkus: That case has not been tried?

The Court: I got that mixed up with the Gangy Cohen case.

Mr. Rosenthal: Therefore I asked him whether he procured immunity or whether he signed a waiver when he testified before the Grand Jury.

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3439

The Court: That has nothing to do with this case. Objection sustained.

Mr. Rosenthal: On the question of promises held out to him on anything he may have done.

The Court: You are not entitled to go into a fishing excursion for prospective trials. This is only manufacturing material for the purpose of the trial of other cases.

Mr. Rosenthal: I respectfully except to your Honor's statement, and I ask your Honor to instruct the jury to disregard that statement.

3440

The Court: The jury knows that they are to listen only to evidence. They will have to disregard a whole lot of things in this case that do not concern them.

Q. Did you testify before the Grand Jury—now wait for the objection—I am going to make this my record—that is why I ask the question. Did you testify before the Grand Jury in whatever county the Yuran murder took place—yes or no? A. I don't understand what he means.

3441

Q. (The Court) Concerning the Yuran murder case, did you testify before some Grand Jury? A. Yes, sir.

Q. Did you sign any waiver of immunity before you went in before that Grand Jury—yes or no?

Mr. Turkus: Objected to.

The Court: Sustained as irrelevant and incompetent.

Mr. Rosenthal: Exception.

3442

Sol Bernstein—For People—Cross

Q. Did you ever go to a race track?

Mr. Turkus: I object.

Mr. Rosenthal: This has a direct bearing on association, connected with this case.

Mr. Turkus: Then it is withdrawn.

The Witness: What do you mean, did I go to a race track.

3443

Q. Did you ever visit a race track in the year 1936? A. Yes.

Q. Did you ever go to the races when they were in Queens County or up in Westchester at any time?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant, nothing to do with the Rosen killing.

Mr. Rosenthal: We will find out about that.

Mr. Turkus: It certainly does not affect credibility if a man goes to a race track.

3444

The Court: Objection sustained.

Mr. Rosenthal: May I argue this proposition in the absence of the jury?

The Court: No, you may not. Make your question specific so that the Court may see whether it has anything to do with the case.

Mr. Rosenthal: Exception.

Q. Did you ever see the defendant Louis Capone at any race track in or about Long Island or Westchester? A. What do you mean—a lot of times.

Q. In Jamaica, Belmont, anywhere? A. I don't understand what you mean.

Mr. Rosenthal: Being told by your Honor I must ask my questions specifically, after this man has denied he has ever been to a race track—

The Witness: (interrupting) I have been to race track lots of times, with him.

The Court: Now you have your answer. He says he met Capone many times at the race track.

The Witness: I went with him, too.

By Mr. Rosenthal:

Q. What race tracks did you go with Capone to? A. Jamaica, Belmont, those two tracks.

Q. In 1936? A. I don't recall what year it was.

Q. In 1937? A. It might have been 1937.

Q. Might it have been 1938? A. Might have been.

Mr. Turkus: I object to speculation about visiting race tracks. It has nothing to do with the Rosen killing. After two and a half days of cross-examination I persist in my objection.

The Court: It is of no consequence. Sustained.

Mr. Rosenthal: I respectfully except. And I also except to the statement of two and a half days. He had this man on direct for a day. I have not had him, on the stand for three hours, and I am

3448

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entitled to a cross-examination as long as his direct, if not more.

Mr. Turkus: Is that statement for the record that he is making?

The Court: Please let it go.

Q. Did you know that Capone owned a restaurant? A. What do you mean by restaurant, sir?

3449

Q. Do you know what the meaning of the word "restaurant" is? A. I understand what you mean, but if you explain it to me better I will tell you, sir. I know what you mean, very good.

Q. Then answer it. A. A cabaret. He had a piece of it, a partner of the mob.

Q. (The Court) Which one? A. The Rendezvous, on Ralph and Sutter.

Mr. Rosenthal: I move to strike out the answer as not responsive.

The Court: Motion denied.

Mr. Rosenthal: Exception.

By Mr. Rosenthal:

3450

Q. Where was this cabaret? A. Ralph and Sutter.

Q. What was the name? A. Rendezvous.

Q. When was this? A. I don't recall the year.

Q. Do you know whether Capone owned a baker shop at any time? A. I cannot recall, sir.

Q. Do you know he had a restaurant on Stone Avenue—yes or no? A. I cannot recall, sir.

Q. Were you ever in a restaurant that had the name "Capone" on it, at Stone Avenue, at No. 220?

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3451

Mr. Turkus: Objected to.

The Court: Objection overruled.

Q. Were you, at any time? A. I cannot recall.

Q. You cannot recall whether you were in a restaurant at 220 Stone Avenue?

Mr. Turkus: I object, that is just what he said.

Q. Is that your answer?

3452

Mr. Turkus: I object to it as argumentative.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. When you were first arrested were you confronted with Reles? A. No, sir.

Q. At any time before you made the statement to Captain Bals and Mr. O'Dwyer, or Judge O'Dwyer, were you confronted with Reles?

3453

Mr. Turkus: Objected to as repetitious. He said no.

The Court: Objection overruled.

Q. What is your answer? A. No, sir.

Q. Did you immediately upon your arrest, or your giving yourself up, talk about the Rosen murder, immediately upon your giving yourself up?

Mr. Turkus: Objected to as repetitious. This was discussed yesterday.

3454

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Mr. Rosenthal: Not by me at any time.

The Court: It is repetitious, but, technically speaking, you are entitled to an answer the same as Judge Talley.

Mr. Rosenthal: Judge Talley did not ask about it. The District Attorney rehearsed it—it was brought out on examination by Mr. Turkus.

The Court: If it is on the record, it is there. Let us have it again, though.

3455

Q. May we have an answer to the question?

A. What did you say?

By the Court:

Q. Did you talk right away about the Rosen case? A. Yes, sir, right away.

Mr. Rosenthal: If you will pardon me for a moment, Judge, while I look over these papers.

3456

The Court: Can't you let your associate turn over those numerous papers while you proceed on something else?

Mr. Rosenthal: All right.

By Mr. Rosenthal:

Q. Is it not a fact that in this trial, before I asked you today, in the trial in the mountains, you said you did not know what the word "immunity" meant?

Mr. Turkus: Objected to as repetitious.

The Court: Objection sustained.

A. You had better look good, sir, look good, look in your book good.

Q. Are you now finished? A. Yes, sir.

Q. When after September 13, 1936, did you next see Louis Capone, ~~how~~ long after? A. About a couple of weeks, sir.

Q. I want to get this straight, now, so that after you say the car left in which you and Ferraco were, you did not see Capone again for a couple of weeks, is that right? A. Yes, sir.

Q. How long have you lived in Brownsville?

Mr. Turkus: Objected to as repetitious.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Do you know the Brownsville neighborhood thoroughly? A. Yes, sir.

Q. Had you lived there practically all of your life?

Mr. Turkus: Objected to as repetitious.

Mr. Rosenthal: I have not asked anything on that, sir.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. Prior to 1936, did you know Blake Avenue, in the Brownsville section? A. I passed it, yes, sir.

Q. Had you traveled through it thousands of times before 1936?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

3460

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Mr. Rosenthal: Exception.

Mr. Rosenthal: This is in connection with his statement as to Capone having told him about a particular route. I want to show familiarity on his own part—for years before with those particular streets.

Q. Well, I will put it in a different form. Prior to 1936, had you driven through Blake Avenue on innumerable occasions?

3461

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant; further, it is repetitious and it does not go to the point urged.

Q. (The Court) Were you thoroughly familiar with Blake Avenue and have you been on it many times? A. Yes, sir.

Q. Were you thoroughly familiar with Pennsylvania Avenue? A. I passed it, yes, sir; I passed around there. That is East New York. You are talking about Brownsville. That is East New York. You are talking about Brownsville, sir.

3462

Q. Are you through? A. Yes, sir.

Q. Were you thoroughly familiar with Van Sinderen Avenue?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant; it does not go to the point urged.

The Court: Objection overruled.

A. I passed it, sir, yes, sir.

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3463

Q. Had you driven through Van Sinderen Avenue on innumerable occasions prior to 1936?

Mr. Turkus: Objected to as repetitious.

The Court: I don't see what bearing it has, because there is no legitimate deduction that the alleged purpose of the rehearsal as to the route was to familiarize him with Brownsville or take a particular course at a certain time.

Mr. Rosenthal: I except to the court's statement and say that is for the jury to determine based upon this man's knowledge of a particular locality, it was necessary to go over it seven or eight times, streets that he knew by heart.

3464

The Court: You are not talking to the court, you are talking to the gallery and to the jury. Sustained.

Mr. Rosenthal: I respectfully except.

The Court: If you were talking to the court, you would be respectful in your manner.

Mr. Rosenthal: I except.

3465

The Court: You are not looking at the Judge, you are looking at the jury, so as to create a feigned attitude in relation to the court, which the court disapproves.

Mr. Rosenthal: I except. I am looking directly at your Honor.

The Court: Now, please proceed with your examination.

Mr. Rosenthal: I take exception to your Honor's remarks.

3466

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Q. You are thoroughly familiar for years with each one of the streets which you say you went over with Louis Capone in 1936? A. What do you mean, familiar?

The Court: Is there an objection?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

3467

Q. I am going to show you a paper and ask you whether that correctly describes the route which you were told by Louis Capone to take, according to your statement.

Mr. Turkus: I object to that.

The Court: Let me see it.

(Paper handed to court.)

The Court: This is a chart. I don't know whether it is correct or not.

Mr. Rosenthal: I am asking the witness if he knows.

3468

The Court: The record sets the route. All this requires is a check-up against the route.

Mr. Turkus: I have something much better than that. There will not be any question about it. If you have any, I will give it to you now.

The Court: The reason I am going to sustain it is that while it states the route, it also contains something else which is very nice from the viewpoint of the defense but which the court considers improper, and if seen by the jury might create confusion.

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3469

Mr. Rosenthal: I ask that it be marked for identification, and respectfully except to your Honor's remark.

(Received and marked Defendants' Exhibit N, for identification.)

Mr. Rosenthal: I ask for a ruling on the question as to whether the witness on the stand can see this and say whether it correctly or does not correctly depicts the route. I will ask the question.

3470

The Court: You will not ask the question. The court has ruled, it is on the record. The stenographer will read the ruling of the court.

(Stenographer reads.)

Mr. Rosenthal: I except to your Honor's ruling. May it appear on the record the witness did not see the paper at all?

Q. When was it you first met Strauss?

3471

Mr. Turkus: Objected to as repetitious.

The Court: Finish the question.

Q. (Continuing) Before the 13th of September, at which time you say you had a talk with him?

Mr. Turkus: Objected to.

The Court: Objection overruled. I think you went over that.

Mr. Rosenthal: I have not even touched anything regarding this. This is between

3472

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Friday and Sunday. I have not even asked a question on it.

Mr. Turkus: That is true; there was nothing touched on it in the cross-examination about the killing, that is true.

The Court: You are right, that was Judge Talley.

The Court: Is it your intention, Mr. Rosenthal, to go over that?

3473

Mr. Rosenthal: It is my intention to go over any part of that that in anywise allegedly affects my client, whether Judge Talley, Mr. Turkus, or any other attorney in this case, goes over it in behalf of his own defendant.

The Court: You are not adopting any part of Judge Talley's cross-examination as your own?

Mr. Rosenthal: I don't say that. Any part of his examination which may in anywise affect my client and has any bearing on it, I will not even dwell upon to any extent, or I may not even touch.

3474

The Court: This was all gone over by Judge Talley. What this court means is, you do not accept the answers of the witness. All right, go ahead.

Mr. Rosenthal: I intend to show there was a difference in his answers to Judge Talley as compared to Mr. Turkus in this trial, and there also may be a difference when I question him. That is what I am cross-examining him for.

The Court: I know what you are cross-examining for. I do not have to be told.

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3475

Mr. Rosenthal: I say that with all respect. That was the reason and necessity for repetition.

The Court: There is too much talk to the gallery and not to the court.

Mr. Rosenthal: I except to that. All my remarks are addressed to you, and you alone, and for no other purpose.

The Court: A great many are for other purposes.

Mr. Rosenthal: May I proceed?

3476

The Court: Yes.

Mr. Rosenthal: I will withdraw the question and start over again.

Q. When was it you say you met Strauss prior to the 13th of September in respect to the Rosen matter?

Mr. Turkus: I object to the form of the question. This witness is not testifying according to dates.

The Court: The 13th of September was Sunday, the day of the alleged killing. Do you mean in relation to this particular killing?

3477

Mr. Rosenthal: I do not know of any other killing. Yes, I directed his attention to Mr. Rosen.

The Court: He knew Strauss for years, it is claimed. Do you want him to tell you each and every time he met Strauss?

Mr. Rosenthal: I mentioned the Rosen killing in my question.

3478

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The Court: That is what I am asking you.

By the Court:

Q. When did you first see Strauss in relation to the Rosen killing? A. After I came back from the route with Louis Capone.

By Mr. Rosenthal:

3479

Q. Were you waiting for a party on Friday to come along while you were seated in your automobile? A. No, sir, I was in the Coffee Pot first. I left word there that I would be sitting in the car.

Q. I just asked you whether you were waiting in your automobile for somebody to come along on Friday, and you said, "No, sir." A. Yes, sir.

Q. Now, who was it that you were waiting for to come along? A. Mike Sycoff, who works for Louis Capone and Harry Strauss, a shylock.

3480

Mr. Rosenthal: May I ask it be stricken, all after "Mike Sycoff"?

The Court: Strike that part out.

Q. How long had you been waiting for Mike Sycoff? A. I cannot tell you.

Q. What time of the day were you waiting for Mike Sycoff? A. Must have been 12 o'clock or 12:30, something like that. I did not have any watch; I did not time it.

Q. When you were under direct examination by Mr. Turkus you were asked the time, but

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3481

you did not tell him you did not have any watch, did you?

Mr. Turkus: Objected to as argumentative.

The Court: Objection sustained.

Mr. Tarkus: I did not ask him the time, the way you did. I withdraw that. I apologize to the Court. I did not mean to wrangle.

The Court: The objection is sustained.

3482

Mr. Rosenthal: Exception.

Q. About what time, to the best of your recollection, was it that you were waiting in your automobile for Mike Sycoff to come along?

Mr. Turkus: Objected to as repetitious, he has stated that.

By the Court:

Q. Was it on Friday morning? A. About 12:45 in the afternoon.

3483

By Mr. Rosenthal:

Q. How long had you been waiting before you saw Strauss? A. About 15 minutes, sir.

Q. Were you in the car when you first saw Strauss? A. Yes, sir.

Q. Was this an accidental meeting between you and Strauss?

Mr. Turkus: I object to the form of the question.

3484

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The Court: Objection overruled.

A. What do you mean?

By the Court:

Q. Was it an appointment or did he just happen to come along? A. Just happened to come along, sir.

3485

By Mr. Rosenthal:

Q. When he came along where was your car parked? A. On Sackman and Livonia; if you give me a picture I will show you where.

Mr. Rosenthal: Never mind, Mr. Turkus, if I want the information I will ask for it.

3486

Q. How near the Coffee Pot was it you were parked with this car? A. Across the street, on Sackman Street, sir, away from the movies; the movies on the corner of Sackman and Livonia, away from that, a little bit back. Show me the picture and I will show you it good.

Mr. Turkus: May the record show at the time Mr. Rosenthal stated he did not want my assistance, that if he wanted anything he would ask for it, I took hold of People's exhibits in the case and had them in my hand?

Mr. Rosenthal: You started to hand them back toward me, but I told you when

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3487

I needed your assistance I would ask you for them.

Mr. Turkus: That is true.

Q. What type of car were you in? A. My own car, a Buick.

Q. What type of car? You understand the question. A. A Buick.

Q. Was it a closed Buick? A. A four-door Buick.

Q. A sedan? A. What do you mean by "sedan"? A sedan, yes, sir.

3488

Q. You have stolen 75 automobiles, haven't you?

Mr. Turkus: Objected to as repetitious.

The Court: Sustained. This is just a waste of time.

Mr. Rosenthal: When the man asked me what I meant by a sedan—

The Court: This is a waste of time. You are only quarreling with the witness, all calculated to lose the attention of the jury, and the Court wants the jury to pay strict attention to the case.

3489

Mr. Rosenthal: There is no such calculation on my part.

The Court: That is the way it works out. If you keep to the point you will hold interest.

By Mr. Rosenthal:

Q. Were you seated behind the wheel of the car? A. Yes.

Q. Was the motor running? A. No, sir.

Q. You had been parked there for about 15 minutes waiting, when Strauss came along?

Mr. Turkus: Objected to as repetitious.

3490

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Q. (The Court) Do you know how long it was before he came? A. About 15 minutes.

The Court: It is immaterial anyway.

By Mr. Rosenthal:

Q. Did Strauss then come over to your car?

A. Yes sir.

Q. Get into your car? A. Yes, sir.

3491

Q. And you sat down, having a general conversation, is that right? A. Yes, sir.

Q. Now, how long had you been talking before anybody else came along? A. 15 minutes, 20 minutes, 25 minutes, something like that.

By the Court:

Q. Did you time it? A. No, sir, I had no watch.

Mr. Rosenthal: I respectfully except to your Honor interrupting my cross-examination.

3492

The Court: Mr. Rosenthal, sensibly, in 1936 if you sat in an automobile talking to somebody about nothing in particular, would you at this late day be able to tell how many minutes you sat there?

Mr. Rosenthal: Does your Honor wish me to answer that?

The Court: I am just calling your attention to it.

Mr. Rosenthal: My credibility is not at stake; his is.

The Court: It is not a question of credibility; it is a question of whether this man has a super-brain, beyond yours or mine or anybody else's.

Mr. Rosenthal: That is for the jury to determine, whether he has or whether he is making believe he has, or not.

The Court: Keep to the point.

By Mr. Rosenthal:

Q. Who came along? A. Louis Capone, Mendy Weiss, and Farvel Cohen.

Q. Before they came along nothing was said by Strauss to you regarding getting a drop, was there? A. No, sir.

Q. Now, when they came along who was it that approached the car? A. What do you mean, when they came along? I don't understand what you mean. When they came back?

Q. I am up to the point where you say three men came along. A. Yes, sir.

Q. As you are sitting in the car with Strauss. A. Yes sir.

Q. Now, then, did Strauss call out of the car to these men or did these men walk directly over to the car without being accosted by anybody? A. They walked over to the car, and Pep, they called him, "Come on outside." Before he went outside he said to me, "Hang around, don't go away."

Q. So, without Strauss calling them, they came over to the car where you and Strauss were seated, is that right?

Mr. Turkus: I object. He just said it.

3496

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Q. (The Court) Do you recall whether one of them called him out of the car? A. They all called over to the car ~~together~~.

Q. Then they left the car, is that right? A. Yes, sir.

Q. Did Strauss, while he was waiting in the car with you, say anything about having an appointment with these three men? A. No, sir.

3497

Q. After they left the car, how long were they gone before they returned? A. Might have been three-quarters of an hour, sir.

Q. During that time did Sycoff come along? A. No, sir.

Q. Did Sycoff ever come along that day while you were waiting for them? A. No, sir.

Q. Had you made an appointment with Sycoff to meet you that day? A. No, sir.

Q. When they returned, in about three-quarters of an hour, who was the first one that spoke to you? A. Harry Strauss, sir.

Q. When he spoke to you the three other men were standing right there? A. Together, sir.

3498

Q. You had previously gone away on trips with Strauss, had you?

Mr. Turkus: Objected to as repetitions.

Mr. Rosenthal: I have not asked him about that. I want to show association between him and Strauss, if any.

The Court: That has been shown. Objection sustained.

Mr. Rosenthal: I respectfully except.

Q. When Strauss came back what was it he said to you in the presence of these men? A. He said to me, "Steal a car and get a drop to

put the car." Then he said to me if I can get a drop. I said, "Yes."

Q. Have you read over the minutes of your testimony since you have been on the stand?

A. No, sir.

Q. Will you just repeat what he said to you?

Mr. Turkus: Objected to as repetitious.

The Court: Objection sustained.

Mr. Rosenthal: I submit I am entitled to that. I take exception.

3500

Q. Didn't he only tell you at that time merely to get a drop, and saying nothing about stealing a car?

Mr. Turkus: Objected to as repetitious.
This witness just answered.

The Court: Objection sustained.

Q. Is it not a fact he merely told you to get a drop and said nothing about stealing a car?

Mr. Turkus: Objected to as repetitious.

3501

The Court: The Court has ruled on that. The last question should not have been put.

Mr. Rosenthal: I respectfully except to to the Court's ruling.

Q. Weren't you told to steal a car on the following day? A. No, sir.

Q. After he told you to steal a car and get the drop, and then he changed it and said, "Can you get a drop?" Is that it?

3502

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Mr. Turkus: I object.

The Court: Objection sustained.

Q. Did they leave you? A. What do you mean?

Q. Did the people leave you and you stay alone then? A. They told me to come back at Sackman and Livonia at four o'clock on Saturday.

3503

Q. Is that all that was said? A. That is all that was said.

Q. That was all said by Strauss, wasn't it? A. Yes, sir, they were together, sir.

Q. Strauss was the only one that was doing the talking, is that right? A. Yes, sir.

Q. Did they then leave? A. Yes, sir.

Q. All of them together? A. Yes, sir.

Q. Did they walk away? A. Yes, sir.

Q. And you remained there, waiting, with your car? A. No, sir.

Q. Did you leave with your car? A. Yes, sir.

3504

Q. When you left with your car, where was it you went to? A. Lincoln and Ralph, to get a drop.

Q. Were you familiar with the locality, Lincoln and Ralph? A. Yes, sir.

Q. Did you know the owner of the place where you went to get the drop? A. No, sir.

Q. Did you go to get this drop without being directed in what vicinity you were to get the drop? A. No, sir.

Q. Were you told by anybody where you were to get the drop? A. No, sir.

Q. Well then, you went to this particular vicinity without instructions as to where you were

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3505

to get a drop? A. I went cruising until I came to that spot.

Q. Cruising? A. Yes, sir, looking around for a place.

Q. But you cruised around for this place without any direction from anybody as to where the drop you were after was to be located?

Mr. Turkus: Objected to as repetitious and answered twice.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

3506

Q. How many times had you been to the locality where this drop was located? A. What do you mean? I don't understand what you mean.

Q. I will put it a little more plainly. How many times had you been in this neighborhood or block where you say this drop was located?

A. Jesus, I passed around there lots of times.

Q. Were you very familiar with that particular locality?

Mr. Turkus: I object. He says he went over it many times.

3507

The Court: Sustained. It makes no difference. You do not have to be familiar with a locality to get a drop.

Mr. Rosenthal: These are all matters brought out on direct.

The Court: It is all irrelevant.

Mr. Rosenthal: They were brought out on direct.

The Court: Sustained as irrelevant, a waste of time.

Mr. Rosenthal: Exception.

3508

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Q. Do you know the name of the person from whom you rented the drop? A. No, sir.

Q. Was it a man or a woman? A. A woman, sir.

Q. Did you see the woman in the District Attorney's office? A. Yes, sir.

Q. When you were asked by Mr. Turkus, didn't you say you saw a man, the owner, in the District Attorney's office? A. No, sir.

Q. It was a woman you saw? A. Yes, sir.

3509

Q. When was the last time you saw this woman in the District Attorney's office? A. Four or five months ago, I think.

Q. Did you go over the route or place where the drop is located since you gave yourself up? A. Yes, sir.

Q. When did you go over the place, and with whom, where the drop was located? A. At first I went with Captain Bals.

Q. How long after you gave yourself up, about, if you remember? A. About three or four weeks, I think.

3510

Q. About three or four weeks?

The Court: He said, "I think."

Q. Did you go over more than once the place where it is located? A. Yes, sir, with District Attorney Turkus, Mr. Klein, and plenty of detectives.

Q. How many times did you go over there? A. I went once, then once taking pictures, pointing out the spot.

Q. How many times did you go up there? A. About three times all told, with Captain Bals, maybe four times.

Q. You led them to the place where the drop was located? A. Yes, sir.

Q. How long before you surrendered yourself was it you had last seen the drop? A. What do you mean, how long?

Q. Had you ever seen it after September 13, 1936, had you ever gone there again? A. No, sir, only when I went with them, sir.

Q. Up until the time you gave yourself up and went with them, had you ever gone to this place since September, 1936?

Mr. Turkus: Objected to as repetitious. He just answered it.

The Court: Sustained as repetitious.

Mr. Rosenthal: Exception.

Q. At what time was it, approximately, that you got the drop? A. I would say close to three o'clock.

Q. Then where did you go? A. I went looking for Muggsy—oh, I went to get a lock first by the locksmith; then I went looking for Muggsy—Muggsy Cohen.

Q. What time was it you went looking for Muggsy? A. After I got done getting the lock.

Q. Three o'clock? A. I got done about three o'clock.

Q. Four o'clock?

Mr. Turkus: I object. He has just answered.

Q. (The Court) Did you time yourself by a watch or a clock? A. No, sir, I didn't have no watch.

3514

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Mr. Rosenthal: I object to the court's question.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

Q. Approximately at what time was it you then went to get Muggsy? A. I found him at eight o'clock at night.

Q. Did you state in answer to—

3515

Q. (The Court) Did you take any pains to jog your memory all these years with the time of day that each one of these events happened?

Mr. Rosenthal: May I have an exception to your Honor's question?

The Witness: I could never forget.

By the Court:

Q. Did you pay any attention to the particular time? A. No, sir, I did not have no watch. I did not have no diary.

3516

Q. Did you keep any record of the hours or minutes? A. I did not have a diary.

Mr. Rosenthal: I except to the court's questions, interrupting my cross-examination.

The Court: I am not interrupting. You have been turning pages and asking no questions for some time.

By Mr. Rosenthal:

Q. You just testified when Mr. Turkus asked you the question and when Judge Talley asked

you the question first, that you met Muggsy at two o'clock. Did you say that in this very trial?

Mr. Turkus: I object That is not the testimony.

The Court: The previous testimony speaks for itself. Objection sustained.

Mr. Rosenthal: Exception.

Q. What did you do between the time you say you got the drop and you went looking for Muggsy—just look for him some place? A. I looked for him some time, and I hung around Amboy and Sutter, that is where he comes around.

Q. You hung around there for five hours? A. Wait a minute—no, I cruised around maybe for two hours. For two hours I was looking for him, sir.

Q. Which is it, you hung around Amboy and Sutter, or you cruised around for a couple of hours looking for him first?

Mr. Turkus: I object to that as repetitions.

The Court: Sustained. He has answered it.

Mr. Rosenthal: Exception.

Q. How long did you hang around the corner of Amboy and Sutter waiting for Muggsy Cohen? A. About three hours.

Q. Then he finally came along, is that right? A. Yes, sir.

3520

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Q. Now, you took him or wanted to take him along because you knew there was going to be a murder, isn't that right, you wanted him to help you? A. No, sir; if I knew there was going to be a murder, I would not let him take out the radio, I would not have made up a key, and I would not have gotten a two door car.

Q. If you knew there was going to be a murder, you would not have made any key? A. No, sir.

3521

Mr. Turkus: I object to it. He has answered.

(By direction of the court, the last answer of the witness was read.)

Q. Why, you were told when there was going to be a murder? A. Saturday, when I came back with Louis Capone from the route, Saturday at four. I met Louis Capone at four o'clock. He took me over the route and he told me there was going to be a murder.

Q. You remember that time specifically? A. I cannot forget it. I never will forget it, sir.

3522

Q. Are you finished?

Mr. Rosenthal: I move to strike that out, his exclamation. I will withdraw it.

Q. You did forget, Mr. Bernstein, that when you were eighteen of age you went out to kill a man in a stick-up if he resisted, you with two other professional stick-up men, that you forget until I directed your attention to it on this trial?

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3523

Mr. Turkus: I object to it as repetition.

The Court: Objection sustained. This is simply a quarrel.

Mr. Rosenthal: Exception.

Q. You had always stolen cars from garages, hadn't you?

Mr. Turkus: Objected to as repetitions.

The Court: Objection sustained.

Mr. Rosenthal: I never touched on any of this examination, sir.

The Court: The record accommodates you with that information, unless you want to prove that he did not.

Mr. Rosenthal: I submit, if I can get a ruling from the court—

The Court: If you want testimony that he did not steal a great many, I will let you proceed.

Mr. Rosenthal: That is not the purpose of my question at all.

The Court: Then, the Court sustains the objection.

3524

3525

Q. Of the 75 cars which you admit having stolen, with the exception of this one, you stole alone, didn't you?

Mr. Turkus: I object to that as repetitions.

The Court: Objection overruled.

Q. (The Court) Were you always alone? A. Always alone, except this car.

3526

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Q. And the 75 cars, with the exception of this one that you stole, were stolen from garages and not from the street, is that right?

Mr. Turkus: Objected to as repetitious, already gone over; he has been over two days on cross-examination as to the theft of cars, the make of cars, where they were stolen from.

3527

The Court: Please do not argue. The objection is sustained as repetitious.

Mr. Rosenthal: Exception.

Q. Did you steal any other car other than this one in question, from the street?

Mr. Turkus: Objected to as repetitious.

The Court: Objection overruled.

A. Always in garages, sir.

3528

Q. Now, when you met Muggsy that night at eight o'clock you asked him to do you a favor, to come along with you, didn't you? A. Told him to get the hot box and meet me at 12 or 1 o'clock at night, do me that favor, yes, yes, if that is what you mean.

Q. (The Court) By "hot box" do you mean jumper? A. Yes, sir, a jumper to start the car.

Q. In the 74 other cars, approximately, that you had stolen, no jump box was ever used? A. Yes, sir.

Mr. Turkus: Objected to as repetitious; he said there was—

The Court: No argument.

Q. Were you asked these questions at page 670:

"Q. What did you do? A. Where?

"Q. Where you went at three o'clock in the afternoon. A. I seen Muggsy Cohen.

"Q. Who is Muggsy Cohen? A. A car thief and radio--"

Mr. Turkus: Will your Honor read the next question and you will see that is the fourth time they were asked?

3530

Mr. Rosenthal: Again that is improper for the District Attorney to state. If there is anything about the testimony that he wants to read he has a right after I get finished to read such part as he desires.

Mr. Turkus: I know the law. I am making objection it is repetitious.

The Court: Sustained as incompetent for the simple reason it is already in the record and before the jury. But it is noted that from a strict construction of the text it is not inconsistent with what he has testified to in answer to you. He does not say he saw Muggsy Cohen at that hour.

3531

Mr. Rosenthal: I except to the Court's interpretation of the testimony instead of leaving it to the jury to determine.

The Court: You may argue that to the jury.

Mr. Rosenthal: I am making a legal objection.

The Court: At the right time. The Court has ruled. Proceed.

3532

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If we can hold this examination down to relevant matters and avoid incompetent matters, it is possible another witness may be able to testify before we recess this afternoon. Now please proceed with that argument.

Mr. Rosenthal: I am not going to argue, but I am going to—

The Court: This is simply a waste of time. The Court is through. Now proceed with the witness.

3533

Mr. Rosenthal: I submit I have a right to put an exception on the record.

The Court: I know your rights, and I know the Court's rights very well, and I am quite confident the Court is right. Proceed.

Mr. Rosenthal: I respectfully except to the Court's statement, since this man has not been under my cross-examination—

The Court: (interrupting) No speeches. You have your exception.

3534

Mr. Rosenthal: All right, I except to the Court's statement.

Q. When was it you went with Muggsy to get the car? A. About 12 or 1 o'clock.

Q. Did you just cruise around until you found a car? A. What do you mean, sir? We were looking for a car, yes, sir.

Q. You used the word "cruise" didn't you? A. Yes, sir.

Q. Did you cruise around looking for a car?

Mr. Tarkus: Objected to as repetitious. He has just answered.

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3535

Mr. Rosenthal: He asked me what I meant. I want a direct answer from this man as to what I do mean and his understanding of what I mean.

The Court: This is splitting hairs on verbiage. Sustained as repetitious.

Mr. Rosenthal: Exception.

Q. Had you ever been in the particular locality where you stole this car before?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

3536

The Court: Objection overruled.

A. Yes, sir.

Q. When for the next time after you stole this car was it that you went back to that particular location with anybody to show them where the car had been stolen from?

Mr. Turkus: Objected to as repetitious.

The Court: Objection overruled.

3537

By the Court:

Q. When did you take Captain Bals or anybody else to Lefferts Avenue, do you remember how long after? A. Three weeks after I told them everything I done, then I went with Turkus, Mr. Klein, and plenty of detectives. I showed them everything. That is how they got those pictures.

Q. Did you keep a diary of any of those times?

A. No, sir.

3538

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By Mr. Rosenthal:

Q. Did you, from the day you stole the car until the day you returned after delivering yourself up, ever go back to that particular spot where that car had been stolen from?

Mr. Turkus: Objected to an incompetent, immaterial and irrelevant.

The Court: Sustained as irrelevant.

3539

Mr. Rosenthal: Exception. That is all on the question of this man's credibility, on the testimony given on direct.

The Court: The court knows your purpose without any explanation.

Q. You had no difficulty recognizing the exact spot that you stole this car from when you went back four or more years afterwards with Captain Bals, did you?

Mr. Turkus: Objected to as argumentative.

3540

The Court: Objection overruled.

A. There was an empty lot there.

Q. (The Court) Did you have any difficulty in finding or recognizing it? A. No, sir.

Q. What time was the car stolen? A. About one o'clock.

Q. Was it stolen at two o'clock? A. Maybe two o'clock I didn't have a watch; I didn't keep this in any books, whatever I done.

Q. Are you finished?

Mr. Turkus: I object to the question, "Are you finished?", when it is apparent the witness said nothing for seconds.

The Court: Proceed with the next question.

Q. Why was it you wanted Muggsy Cohen with you on this particular theft when you stole seventy-five cars alone, why did you want him to do you a favor on this particular car?

Mr. Turkus: I object. That is a double question.

Mr. Rosenthal: I will withdraw it.

Q. Why did you take Muggsy Cohen? A. Because it didn't make anything to me; he was a radio crook, just take the car and take the radio out; it didn't mean anything to me after he takes the radio out.

By the Court:

Q. Then the impression was, if the car was found, it was stolen for the purpose of stripping?

A. Yes, sir.

Q. And not for the purpose of committing any other crime? A. Yes, sir.

By Mr. Rosenthal:

Q. You understood the Judge's question? A. Yes, sir.

Q. What were you trying to conceal, if the car was found, so as to make it look as if it was only for stripping and not for any other purpose?

3544

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By the Court:

Q. (Interrupting) Just answer the next question yes or no— Did you have a suspicion as to what Strauss wanted the car for?

Mr. Rosenthal: I object.

The Court: The objection is sustained. I thought you wanted that evidence.

3545

Mr. Rosenthal: I don't want words put in the witness' mouth. I wanted him to tell me, not have your Honor ask him a question which would call for yes or no— I want him to tell the jury the reason. I don't want the reason furnished.

Mr. Turkus: I object to that.

The Court: It does not penetrate the Court's skin. Go ahead.

Mr. Rosenthal: I have no desire to penetrate your skin any more than you have to penetrate mine. We are both practicing law after this case is over, you on the Bench, and me at the Bar, I hope.

3546

The Court: Please proceed with the trial.

By Mr. Rosenthal:

Q. You understood the court's original question to you as to the fact that the reason why you wanted Buggsy Cohen was that if the car was found with the radio out, it would look as though the car was merely taken to be stripped and not for any other purpose? You understood that when you answered the court's question?

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3547

Mr. Turkus: Objected to as repetitious.
The Court: Objection overruled.

Q. Did you understand that? A. What is that again?

(Question repeated by reporter.)

The Witness: No, sir.

Q. You did not understand the court's question? A. No, sir.

Q. Do you understand what I am asking you now? A. Yes, sir.

Q. I am asking you whether you understood the court's question that the court asked you, when you answered the court in the affirmative, "Yes", regarding— A. Did you understand—

Q. I can. A. Yes.

3548

Mr. Turkus: I object, and ask that that be stricken out. When it is obvious, I will register an objection. You cannot by any other way get an answer in over an impending objection. That is why I stood up.

3549

The Court: It is also obvious that by the time all this confusion is over the witness will not have the least idea what he is expected to answer.

Q. What I asked you when you just answered was this— Do you remember that Judge Taylor asked you a question about taking Muggsy Cohen along?

Mr. Turkus: Objected to as repetitious.

3550

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The Court: Objection overruled.

A. Yes.

Q. You remember in that question he asked you—the Judge—whether or not the real purpose of taking Muggsy Cohen along and taking the radio out of the car was so that when the car would be found it would appear that the car had merely been stolen for stripping and for nothing else. I think I have substantially stated it.

3551

The Court: That is correct.

By the Court:

Q. Was that the reason? A. I did not know there was to be a murder or I would never have him take out the radio of the car.

Mr. Turkus: He did not understand your Honor's question. That is clear.

3552

The Court: You may, if you wish, make inquiry as to why he took Muggsy Cohen.

Mr. Rosenthal: May I pursue once more whether—he definitely says now he did not understand what your Honor meant.

The Court: That is clear. Put the next question.

Q. Why, then, did you ask Muggsy Cohen at eight o'clock in the evening of Friday to do you a favor and go along with you at twelve o'clock and help you steal the car—why was it you asked Muggsy Cohen to do this when you stole every other car you ever stole in your life alone? Tell

the jury why it was. A. I thought it was to be a slamming job, I didn't figure it was to be murder.

By the Court:

Q. For what? A. To break somebody's head.

Q. How do you spell that—s-c-h-l-a-m? A. I really cannot tell you.

Q. What is the Yiddish meaning of schlam?

Mr. Turkus: I think it is a cut, a slam.

Mr. Rosenthal: I will take your definition.

By Mr. Rosenthal:

Q. What is it slam? A. Yes, sir.

Q. Not slumming? A. No, sir.

Mr. Turkus: I object; that is intended to be semi-comic, I take it.

The Court: Objection sustained.

Q. So you say when Muggsy Cohen—when you took Muggsy Cohen along, you felt that somebody's head was going to be broken, is that it?

Mr. Turkus: I object to that as repetitions.

Mr. Rosenthal: It is very important in view of the previous statement in respect to this particular thing.

The Court: Sustained.

Mr. Turkus: While we are at it, may the record also indicate, in view of Mr. Resen-

3556

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that's objection to where the witness was looking, that half the time Mr. Rosenthal himself looks in the direction of the jury when he questions the witness.

Mr. Rosenthal: I followed Mr. Turkus' habit since this case started, and Mr. Klein's also. That is all they have been doing since this case started.

Mr. Turkus: It might be up to him to take a look at fourteen good looking men.

3557

Mr. Rosenthal: Of course, this is an obvious attempt to curry favor.

The Court: I think it would curry favor with the jury if we would get down to the point.

Mr. Rosenthal: I know that, but I will not let Mr. Turkus get away with it.

The Court: Because they want to get through and get back to their work. The case should be tried with reasonable expedition.

3558

Q. Is it definite that the reason why you wanted Muggsy to steal this car was that you did think a crime was going to be committed with that car?

Mr. Turkus: Objected to as repetitions. He has explained it.

The Court: Sustained.

Mr. Rosenthal: Exception.

Q. If you thought, as you just testified now, that somebody was going to be beaten up with this car, then why did you allow Muggsy to take the radio out?

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3559

Mr. Turkus: I object. We can go on ad infinitum, why, why, why.

Mr. Rosenthal: Again we have another speech. This is taking more time than all of my examination.

Mr. Turkus: That is as true as anything else you say.

Q. Why did you let Muggsy take the radio if you thought a crime was going to be committed?

A. It was not a murder, sir.

Q. Murder is more serious? A. Yes, sir.

3560

Q. This definition of crime—what do you mean by schlam, beating with the fists, beating with a blackjack, beating with the hands, beating with a blackjack over the head, or with a gun, or with a pipe; what does it mean? A. A pipe.

Q. A lead pipe? A. Yes, sir.

Q. You mean—I want to get a definition of this—that people take a lead pipe and hit the other man over the head with the lead pipe?

The Court: That is a known custom.

Mr. Rosenthal: It is not known by me. This is the first time I ever heard the name in my life.

3561

Mr. Turkus: I congratulate you, Mr. Rosenthal.

Mr. Rosenthal: May we have again on the record the Chesterfieldian bow of Mr. Turkus. We have the hands—

The Court: Will you please proceed with the trial of the case?

Mr. Rosenthal: I think I have a right when my integrity is impugned.

The Court: The man has told you in

3562

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answer to your question that he meant slugging with a lead pipe. Now, please proceed with your next question. Let all this nonsense stop. By nonsense, I mean constant interruption by both counsel to the orderly conduct of this cross-examination along competent and relevant lines.

Q. After you stole this car with Muggsy Cohen, who drove the car? A. Muggsy Cohen, sir.

3563

Q. Did you at that time have your own car with you? A. Yes, sir.

By the Court

Q. Did he wear gloves? A. Yes, sir, so as not to get any fingerprints.

By Mr. Rosenthal:

Q. Did you carry gloves in your car for that purpose?

3564

The Court: He said he got them from his own before he went on the job. He testified he got the gloves before he went to take the plates.

Mr. Rosenthal: This is the automobile.

Mr. Turkus: Further, there was not a single fingerprint.

By the Court:

Q. Did Muggsy use gloves? A. Yes, sir, he had his own gloves.

Q. He is an old time thief? A. Yes, sir, a radio thief and a car thief.

By Mr. Rosenthal:

Q. And you used the gloves? A. Yes, sir.

Q. While the car was being stolen? A. Yes, sir, I held the flashlight, sir—oh, no, no, sir—wait a minute—no, sir.

Q. Do you just recall that you did not have anything to do with stealing the car at all? A. In the garage I had the gloves.

3566

Q. We will come to the garage afterwards. The Judge asked you, Judge Taylor, whether you wore gloves, and you said, "Yes", and I asked you whether you wore gloves when you were stealing the car, and you said, "Yes," didn't you?

Mr. Turkus: Objected to as repetitions.

The Court: Sustained. He corrected that.

Q. When was it you put the gloves on? A. When we pulled the car from the garage—when the car was in the garage we were taking out the radio and I had to hold the flashlight.

3567

Q. That was your flashlight? A. Yes, sir.

Q. You carried that flashlight in the car with you? A. It was in my own car. I took it out of the car.

Q. And brought it there, wearing gloves, while he was taking the radio out, is that right? A. Yes sir, I was holding the flashlight when he took out the radio.

Q. You did not touch this car all that time?

3568

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A. What do you mean, I had to touch the car with the flashlight; I had to touch the door, to hold the door open, and give him light to take the radio out underneath.

Q. Up until the time the car had gotten to the garage you had not touched it, had you?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant. He has told us what he did.

3569

Mr. Rosenthal: There goes another speech.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

Q. When the radio was taken out of the car, what did you do? A. Took Muggsy in my own car.

Q. Where did you drop him off at? A. Amboy and Sutter.

Q. In the street, with the radio? A. He went into some house.

3570

Q. How long had you known Muggsy Cohen before that? A. Ten or twelve years.

Q. You had been very friendly, very close to him, hadn't you?

Mr. Turkus: Objected to as repetitions. You even asked him if he went to Florida with him.

The Court: Objection sustained.

Mr. Rosenthal: Exception.

The Court: Gentlemen of the jury, please remember the previous admonition and follow it in all details. The witness is first remanded.

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3571

Mr. Talley: May I speak to your Honor before you leave the Bench, privately, with the District Attorney?

The Court: I will let the jury go out now. Gentlemen, we will adjourn until one-thirty P. M.

The Court: Now, counsel may come up.

(Mr. Turkus, Mr. Klein and Mr. Talley confer with the Judge privately before the Bench.)

(The jury leaves the court room.)

3572

(Defendants remanded.)

(Recess until 1:30 P. M.)

AFTERNOON SESSION. TRIAL RESUMED.

SOL BERNSTEIN, resumes the stand for further cross-examination:

By Mr. Rosenthal:

3573

Q. You say on Saturday, at four o'clock, you met the defendant Capone and Strauss, did you?

A. Yes, sir.

Q. Where? A. Sackman and Livonia, sir.

Q. On the street? A. Coffee Pot, sir.

Q. In the Coffee Pot? A. Called me out, sir. We went out, sir, right outside.

Q. Which is it, they called you out or you went out?

Mr. Turkus: Objected to. That is argumentative "Which is it?". The answer is clear.

3574

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The Court: Sustained.

Mr. Rosenthal: Exception.

Q. Did they come after you or were you there waiting for them? A. They were there, sir.

Q. And then you went into the Coffee Pot?

A. Yes, sir.

Q. And then you all left? A. Went outside, sir.

Q. Did Harry Strauss say anything at all? A. He was there, sir.

3575

Q. Did he say anything at all? A. No, sir.

Q. The only one that spoke was the defendant Capone, is that right? A. Yes, sir.

Q. Just what did the defendant Capone say to you then at that time? A. I told him I got a two-door car and he started hollering at me.

Q. Did Strauss say anything at all? A. He was there, sir.

Q. Did he say anything? A. No, sir.

Q. What next was said? A. Louis Capone told me to take a ride with him, sir.

3576

Q. What did he say, "Get in the car and take a ride"? A. I had my car, sir. He drove my car.

Q. Did you have the other car there, too? A. No, sir.

Q. At that time where was the other car? A. In the drop, sir.

Q. Had you driven up in your car? A. To the Coffee Pot, sir?

Q. Yes. A. Yes, sir.

Q. And when you drove to the Coffee Pot, were you alone? A. Yes, sir.

Q. Then when he told you, "Come on, take a

ride", he got in and started to drive your car?

A. Yes, sir.

Q. Did he drive it over streets that you were familiar with? A. At Bradford and Blake he started to show me the route, sir.

Q. I ask you did he drive it through streets that you were familiar with?

Mr. Turkus: Objected to as repetitious.

Mr. Rosenthal: He did not answer.

Mr. Turkus: He did.

3578

Mr. Rosenthal: I ask the answer be stricken as not responsive.

The Court: He said before he was familiar with all of those streets.

Mr. Rosenthal: I am not talking about the streets of the alleged route now. I am talking, from the Coffee Pot to where they drove.

The Court: From the Coffee Pot? Do you remember the route?

The Witness: Yes, sir; went straight down with Sackman Street, made a left turn until we came to Blake Avenue because you can't go through Vermont or Livonia because there is a trestle. The only way is Blake Avenue, the only entrance. Blake Avenue and Sutter Avenue, there is entrances there.

3579

Q. You were familiar with that?

Mr. Turkus: Objected to as answered.

Mr. Rosenthal: It has not been answered.

3580

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The Court: Yes or no.

The Witness: Yes, sir.

The Court: Was there any street in Brownsville you are not familiar with?

The Witness: I lived in Brownsville. I was born in Brownsville.

The Court: Were you familiar with all of the Brownsville Streets?

The Witness: Yes, sir, not East New York but I know how to get around, sir.

3581

Q. Are you familiar with the points of the compass, north, east, south and west? A. No, sir.

Q. From the Coffee Pot you drove through Sackman Street?

Mr. Turkus: Objected to as repetitious.

The Court: Sustained.

Mr. Rosenthal: Exception.

3582

Q. Where did you stop, if you stopped at all, after you left the Coffee Pot and got to Bradford and Blake? A. What do you mean, sir?

Q. Did the car stop any place? A. When we came to Bradford and Blake, he slowed up, sir.

Q. Did it come to a stop? A. No, sir.

Q. So that from the time that you started from the Coffee Pot, you did not stop until you returned back to Van Sinderen Avenue, is that right?

Mr. Turkus: Objected to as repetitious.

The Court: Sustained.

Mr. Rosenthal: Exception. I have not even questioned on that.

Q. Did you ever stop on the route from the time you left the Coffee Pot until you arrived at Van Sinderen Avenue and the railroad station? A. No, sir.

Q. When you slowed up at Bradford and Blake, was there any conversation between you and Capone? A. He says, "Now watch. This is the route you are going to take", sir.

Q. Is that all? A. When we came to the candy store, he told me, "This is where a guy is going to get killed." That is on Sutter Avenue and Bradford.

3584

Q. We will come to the candy store in a minute. At Bradford and Blake, did you tell us all the conversation that you had?

Mr. Turkus: Objected to. It is repetitious.

The Court: Is that all the conversation, do you recall?

The Witness: I don't recall. That's what he told me. I remember very good — can't forget it, sir.

3585

Q. So that as far as you remember, you have now related to me the entire conversation that was had at Bradford and Blake, is that right?

Mr. Turkus: Objected to as repetitious. He has just said so.

The Court: Sustained.

Mr. Rosenthal: Exception.

Q. You continued going slowly then until you got to where the candy store was on Sutter Ave-

3586

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nue, is that right? A. What do you mean, slowly?

Q. Did you go slowly? A. You got to make a left turn. You got to go slow.

Q. Did you go slowly? A. When you made a left turn, sure, you got to go slow. There is lights over there, sir. I think there was lights—I ain't sure—but when you make a left turn you got to go slow.

3587

The Court: Did you go slow?

The Witness: Yes.

Q. At that time were there lights on Sutter Avenue?

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

The Court: Nothing to do with the case.

3588

Mr. Rosenthal: I respectfully except to that, your Honor.

Q. While you were passing the candy store, you just told us that Capone said something to you. Did he say anything else excepting what you have already stated in answer to the previous question just a couple of minutes ago? A. When we come to the store, that's all he said, sir.

Q. As you left the store,—the store was on Sutter Avenue between Bradford and Wyona; is that right? A. More to Bradford Street.

Q. Did you continue down Sutter Avenue as

you left the store? A. Made a left turn on Sutter and Wyona.

Q. That is the first corner that you come to?

A. Yes, sir.

Q. Then how many blocks did you go on Wyona? A. I went one block, sir, into Wyona and Blake.

Q. That is Blake? A. Yes, sir.

Q. Then how did you turn? A. I went straight ahead with Blake into Pennsylvania.

Q. You made a turn into Blake, did you? A. 3590
A right turn, yes, sir.

Q. And then when you turned into Blake you went on Vermont? A. Wait a minute—I said Pennsylvania, sir.

Q. How many blocks down from Wyona is Pennsylvania Avenue? A. That I did not count, sir.

Q. You know that between Wyona and Vermont are New Jersey and then Pennsylvania Avenue, don't you? A. I went the way he told me, sir. I didn't count.

Mr. Rosenthal: I ask the answer be stricken as not responsive.

Mr. Turkus: I ask that it stand. It is responsive.

Mr. Rosenthal: I am asking for his knowledge now, sir.

The Court: Strike it out.

Q. Do you know that from Wyona Avenue to Pennsylvania Avenue there were two intervening streets, Vermont Street and New Jersey Avenue? A. Can't tell you that, sir. I done the way he told me, sir.

3592

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Mr. Rosenthal: I ask that the latter part be stricken as not responsive.

The Court: No harm done. Strike it out.

Q. Were you familiar with Vermont Street at that time? A. I said I was not so familiar with East New York. Brownsville I said I was familiar.

3593

Q. You turned where on Pennsylvania Avenue, what turn left or right? A. Left.

Q. How many blocks did you go then? A. One block, sir, to Dumont, made a right turn on Dumont.

Q. And then you went straight down Dumont, didn't you? A. Yes, sir.

Q. For six blocks? A. I don't know how many blocks. I went to Snediker Avenue, sir.

Q. You knew Snediker Avenue— A. Yes, couldn't miss that because it was a one way street.

3594

Q. Will you please wait until I finish the question? You knew where Snediker Avenue lay from Pennsylvania Avenue, didn't you?

Mr. Turkus: Objected to. Just answered it was a one way street.

Mr. Rosenthal: That is not an answer to my question.

Mr. Turkus: I have an objection that it is answered.

The Court: Let it stand.

Q. Did you know where Snediker Avenue lay from Pennsylvania Avenue, going down on Dumont Street?

Mr. Turkus: Objected to as repetitious.

Mr. Rosenthal: I have not asked it yet.

The Court: Sustained.

Mr. Rosenthal: Exception.

Q. When you got to Snediker Avenue, what did you do? A. Made a left turn.

Q. For how many blocks? A. One block. That is Livonia Avenue, sir. That is where the elevator is.

Q. And then what did you do? A. Made a right turn, sir.

3596

Q. For how many blocks? A. Just one block, sir.

Q. Then what did you do? A. Made a right turn and stopped, sir.

Q. Right off the corner? A. Right off the corner, yes, sir.

Q. All told, the entire distance that you traveled from the store to where you stopped at Van Sinderin Avenue was approximately how far, in mileage? A. I didn't check it, sir.

Q. Have you any idea? A. No, sir.

Q. Can you tell us how long it took, approximately? A. I didn't have no watch, sir. I didn't clock it, sir.

3597

Q. Did you go slowly over the route? A. What do you mean slowly? I came from the store and the turns, that's where I had to watch myself, sir, them turns—the only thing I had really to know, sir, them turns.

Q. As you were coming from the store, going to Van Sinderen, on this Saturday, did you slow up at each turn? A. Yes, sir. Louis Canone drove the car, sir. He drove my car all the time, sir.

Q. Did he drive slowly over the route?

3598

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Mr. Turkus: Objected to as repetitions.

The Court: Sustained.

Mr. Rosenthal: I respectfully except, sir.

Q. Was anything said, after you left the candy store, up until the time that you arrived at the Van Sinderen Avenue station? A. What time is it?

3599

Q. While you were driving along. A. He kept on talking. He said, "Watch", "Make sure", "Don't forget."

Q. This is on the first trip I am talking about now. A. I can't remember that. We went over it seven or eight times.

Q. Yes, you said that to Mr. Turkus. I am asking you on your first trip was anything said after you left the candy store up until the time that you arrived at Van Sinderen Avenue?

Mr. Turkus: Objected to as repetitions.

The Court: You mean at the time he arrived?

3600

Mr. Turkus: On the first trip.

Mr. Rosenthal: On the first trip, between the time he left the candy store and up until the time he arrived.

Mr. Turkus: This will go on for seven or eight trips.

The Court: Inclusive of the time that he arrived?

Mr. Rosenthal: No, sir. I said up until the time he arrived.

The Court: You mean while on the way to the destination?

Mr. Rosenthal: Yes, sir.

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3601

Mr. Turkus: He has answered that, your Honor.

The Court: He has answered it.

Mr. Rosenthal: I submit there is no answer to that question, but I will accept the Court's ruling on it. Does your Honor overrule or sustain the objection?

The Court: Oh, let him answer again.

A. When we came to Bradford and Blake, he says to me, "Watch."

3602

Q. I said, after you left the candy store—is that clear? A. Yes.

Q. And up until the time and just prior to the time that you stopped at Van Sinderen Avenue, on your first trip, was anything said by Louis Capone to you?

Mr. Turkus: I object to the question. It is misleading in its form because Capone was driving.

The Court: I know what it means.

Mr. Turkus: It is repetitious.

3603

The Court: It is a little bit of a net. I asked you, sir, if you meant inclusive of the time of stopping. You said no.

Mr. Rosenthal: That is right, sir.

The Court: And now you make it up to practically the same moment. That is confusing.

Mr. Rosenthal: I said up to and prior to the time that it stopped, is my question, sir—prior to the time it stopped and while en route from the candy store to Van Sinderen Avenue. I cannot make it any plainer than that.

3604

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Mr. Turkus: That is repetitions.

The Court: He has answered that. You can ask him, if you wish, what, if anything, was said when the car was stopped.

Mr. Rosenthal: I respectfully except. There is no answer to the question, as I recall it. I take it then your Honor sustains the objection?

The Court: Yes.

Mr. Rosenthal: I respectfully except.

3605

Q. After you had come to a stop at Van Sinderen Avenue, was there any talk between you and Capone? A. While riding in the car, he told me, "Watch."

The Court: No, did he say anything?

The Witness: He says, "This is the route you are going to take."

The Court: —when the car arrived at its destination?

The Witness: He said, "Here is where you dump the car."

3606

Q. Is that all he said? A. Then he went over the route again and showed me, to make sure.

Q. I first asked you is that all he said while you were at that point. Is that all he said? A. I didn't have a book and wrote down everything what he said to me, sir.

Q. Is that all you remember he said?

Mr. Turkus: Objected to as repetitions.

The Court: Sustained.

Mr. Rosenthal: Exception.

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3607

Q. Now, then, you started on the same route again, is that right? A. Yes, sir.

Q. How did you get back to Bradford and Blake? What route did you take? A. Made a right—

Mr. Turkus: I object to it, may it please the Court. ' is incompetent, irrelevant and immaterial. Besides the question is misleading because so far it has been indicated Capone was driving.

3608

The Court: Yes.

Mr. Rosenthal: Again we have an interjection by the District Attorney which I object to.

The Court: It is one of the questions that this man might readily answer without noticing the joker, "What route did you take?"

The Witness: Louis Capone was driving the car all the time, sir. I was not driving. All the time he was driving my car. After he left Sackman and Livonia, he had my car all the time, sir.

3609

The Court: These rehearsals that were held, did you go back and forth the same route?

The Witness: Same route, sir.

The Court: Each time?

The Witness: Each time same route.

By Mr. Rosenthal:

Q. You had not started on the first occasion from Van Sinderen, had you? A. What do you mean?

3610

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Q. You left from the Coffee Pot, didn't you?

A. Wait a minute, wait a minute. I got him now, sir. I got him very clear now, very clear, very clear now.

The Court: When the Court speaks, everybody stop. The Court is not trying to appear superior but that is the Court's position it has to maintain.

3611

(To witness) Some of these streets are one way streets. How did you go back, do you remember?

The Witness: Oh, we went about twice to Van Sinderen and Livonia. Then we turned in and then when it came to Snediker and Livonia he said to me, "You know where the spot is." You see we did not make a right turn all the time on Livonia.

3612

The Court: Mr. Rosenthal wants to know whether, when you went back to resume the rehearsal from the point of starting, you went back over it each time by the same or other streets?

The Witness: Other streets until we got to Bradford and Blake and there is where we had to watch all the time, sir. I know what he means.

Q. Did you take a different route from Van Sinderen each of the seven times until you got to Bradford and Blake and then take the same route back to Van Sinderen? Is that what you mean? A. Look, sir, I just had to watch from Bradford and Blake.

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3613

Mr. Rosenthal: I ask that the answer be stricken as not responsive.

Mr. Turkus: I ask that it stand.

The Court: Did you pay attention and do you remember now how you went back each time?

The Witness: Back each time, I don't recall, but I know how I was supposed to drop that car off on Bradford and Blake. That's what I had to watch and make them turns.

3614

The Court: That you say you remember?

The Witness: Very good—can't forget that, sir.

Q. Do you know whether or not Louis Capone owned his own car at that time?

Mr. Turkus: Objected to, incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Rosenthal: I respectfully except to the Court's ruling.

3615

Q. At or about that time, did you see Louis Capone drive in an automobile other than the one which you say you owned? A. What do you mean, sir? He had a car, sir. Yes, he had a car.

Q. Did you ever see him drive any other car? Yes or no. A. Yes, sir.

Q. In that year and at about that time? A. Yes, sir, he had a big car, sir.

Q. What was the make of the big car that

3616

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you saw him drive? A. I don't recall, sir. He had a big car.

Q. Was it a Chevrolet?

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial. Once I have been sustained on that line of questioning.

The Court: Every time you object, I am going to continue to sustain it. Sustained.

3617

Mr. Rosenthal: Exception.

Q. After you had gone over this route, as you claim, seven or eight times, then where did you go to? A. After that here? Went back to Sackman and Livonia, sir.

Q. And who was there when you got to Sackman and Livonia? A. Harry Strauss, sir.

Q. Did Harry Strauss, when you got back there, say anything at all to you? A. He come out. He was talking with Louis Capone, sir.

3618

Q. Did he say anything to you? A. No, sir.

Q. Did Capone say anything to you? A. Yes, sir.

Q. What did Capone say at that time? A. He says, "Go and get plates from a place where it won't be noticeable" meaning a place in a garage where nobody would take out a car—in other words, that it be legitimate.

Mr. Rosenthal: I ask the meaning be stricken as not responsive. I asked for conversation, sir.

Mr. Turkus: I ask that it stand.

The Court: Let the conversation part stand. Strike out the rest.

Q. When Capone said that to you, did Strauss say anything at all? A. He was there, sir.

Q. Did he say anything, is my question? A. I don't recall, sir. I know what I was told, sir.

Q. Is that all the conversation that was had at that spot at that time? A. When I get the plates, put it back on the car and he said "bring the car back to Sackman and Livonia." I will show you a place on the picture. He says, "About ten to half past ten," sir. If you get the picture I will show you where.

3620

Q. Are you finished?

Mr. Turkus: Objected to. An interval of time has elapsed between the witness's answer and that sarcastic question. I ask it be stricken from the record.

The Court: Objection sustained.

Q. After Capone told you to steal the plates, did you leave Sackman and Livonia Avenue? A. I took the flashlight out of my car, the screw driver and the pair of pliers and the glove, sir, and Louis Capone had my car all the time, sir.

3621

Q. Louis Capone had your car all the time; is that what you said? A. Yes, sir.

Q. By "all the time," do you mean all the time that night or all the time— A. Until after the murder, sir.

Q. All the time until after the murder, is that right? A. Yes, sir.

Q. But you had your car when you went out to steal the other car, didn't you?

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Mr. Turkus: Objected to. That has already been answered. Repetitious.

The Court: Sustained.

Mr. Rosenthal: Exception.

Q. Did you walk away from Sackman and Livonia? A. Yes.

Q. And did you walk around, looking for a place to steal plates? A. No, sir.

Q. Did you get a car to go around? A. No, sir.

3623

Q. How did you get to the place where you say you stole the plates? A. I waited until it gets dark and I took a cab to drop me off around East Flatbush section. I think you call that East Flatbush.

Q. You waited until it got dark? A. Yes, sir.

Q. Where did you wait until it got dark? A. On Rockaway and Livonia, sir.

Q. And then took a cab that happened to be passing? A. No, sir, there is plenty of cabs on that corner, sir.

Q. Do you recall who drove you there? A. No, sir.

3624

Q. Then you got off and started to look around the neighborhood?

Mr. Turkus: Objected to as already answered.

Mr. Rosenthal: I have not asked him that, sir.

Mr. Turkus: It is repetitious.

The Court: That is what he said.

Mr. Rosenthal: Does your Honor sustain the objection?

The Court: This is so trivial. Let him answer.

Mr. Rosenthal: I respectfully except. All of this has been gone over in detail on direct examination. If it is trivial, your Honor, now, it was trivial then.

The Court: It is obvious there is no cooperation. It is in the interest of all concerned to be reasonably expeditious, not to deliberately stall the trial of the case.

Mr. Rosenthal: I respectfully except to that remark.

The Court: Every time the Court opens its mouth, there is a leisurely, slow, measured movement of action on the part of counsel to involve the Court in argument. At any and every place, everything is done to prolong the trial. I know how to try a case.

Mr. Rosenthal: I certainly except to your Honor's remark, if it is addressed to me.

The Court: I ought to know how they should be tried, and I know what stalling is. Now proceed.

Q. How did you know, in this particular garage, that the person who owned the car with the plates would not miss the plates the next morning? A. How did I know?

Q. Yes. A. I knew at that time nobody would take out a car, sir, because I was told to go into a private garage and take it.

Q. And did you at that time, when you stole the plates, know that the murder was going to be

3628

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committed that night? Did you—yes or no? A. Yes, sir.

Q. Had you ever been in the particular neighborhood from which you stole these plates prior to the time that you stole them? A. I rode through, around the neighborhood, sir.

Q. When was the next time, after you stole them, that you went to this particular garage from which these plates were stolen? After you surrendered?

3629

Mr. Turkus: Objected to as incompetent, irrelevant, immaterial.

The Court: Sustained.

Mr. Rosenthal: I except.

Q. What time, then, did you next see the defendant Capone? A. When I brought the car around.

Q. When was that? A. Ten, between half past ten, sir, on Sackman and Livonia Avenue.

3630

Q. And who was there at that time? A. Louis Capone, Mendy Weiss, Farvel Cohen, Harry Strauss, Jimmy Ferraco.

Q. Did these men have a conversation in your presence at that time? A. What do you mean, conversation?

Q. Was there any talk in your presence by any of those men at that time? A. They came over to the car and Mendy Weiss started hollering at me why I got a two-door car, sir.

Q. Did he say anything else? A. He says, "What the hell is the matter with you? What the hell did you get a two-door car for for a job like this?"—something like that. I kept quiet, sir.

Q. Is that all that was said by any of the men at that time? A. He told me to take the car and drive it up Bradford and Blake near Sutter and meet him in the park.

Q. Who told you that? A. Mendy Weiss, sir.

Q. Had Capone left before you started to go away with the car? A. I didn't take notice, sir—wait a minute, sir—but I know I gave him back the screw-driver—wait a minute—

Mr. Rosenthal: I ask all but "I didn't take notice" be stricken—

The Witness: Wait a minute.

Mr. Rosenthal: —as not responsive.

Mr. Turkus: I ask it stand and the witness be permitted to finish the rest of his answer.

The Court: Finish.

A. (continued) Louis Capone was there with my car. I gave him back the screw-driver, the flashlight, and the pair of pliers to put back in my car, and I held the gloves.

By the Court:

Q. Did you see whether or not he did leave?

A. I can't tell you. I went away first.

Q. Did he have your car then? A. Yes, sir.

Q. He could have put them in the car without leaving the scene? A. I went away first, sir.

Q. You went and left him there? A. I went away first.

Mr. Rosenthal: I had a motion to strike out. May I have a ruling?

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The Court: Denied.

Mr. Rosenthal: Exception.

Q. Was that the time when Capone, Weiss, Cohen, Ferraco and Strauss were all there? A. Yes, sir.

Q. And you were two or three doors away from the address? A. Yes, sir. On the picture I can show you where I was around, sir.

3635

Mr. Rosenthal: I object and ask that it be stricken. There is no such testimony about an address about two or three doors away. His testimony is in regard to the coal store.

The Court: I beg pardon. In his direct examination he testified that at the appointed time he took the car to Sackman and Livonia and there were Cohen, Weiss, Ferraco, and Strauss, and he parked the car two or three doors away. They then inspected the car.

3636

By Mr. Rosenthal:

Q. That is from a coal store? A. What do you mean, "from a coal store"? Yes, sir, the coal store was around there, but I did not have the car parked over there, sir.

Q. How far from the coal store was the car parked?

Mr. Turkus: Objected to as repetitions. We have gone over the location.

The Court: There has been enough of that. Sustained.

Mr. Rosenthal: I respectfully except.

Q. While you were standing there didn't somebody deliver a package of guns? A. Yes, sir; I think it was Joe Pilch (phonetic spelling).

Q. Is there any question in your mind that maybe it was not Joe Pilch? A. I was excited, but I am not sure, with Mendy Weiss hollering at me. I was excited. I think it was.

Q. I asked you whether or not you are sure it was Joe Pilch, or is there a question or doubt in your mind?

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

The Court: Who gave the package to you?

The Witness: Harry Strauss, sir.

Q. Then you took the car over to the park, is that right? A. Did I tell you the park, sir? Bradford and Blake and Sutter, in the middle of the block.

Q. Was there a park there where you took it? A. Yes, sir.

Q. How far from the park did you park the car? A. Between Bradford and Blake and Sutter, in the center of the block.

Q. How near to the park were you? A. You got to show me the picture and I can tell you, sir.

Q. Have you any idea without a picture how near you parked to the entrance to the park? A. A half a block, sir.

Q. Now, have you fully described to the District Attorney from that point on everything that was done and said in your presence when

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you were questioned by the District Attorney, from the time that you arrived at the park until the following morning when you were in front of the store of Rosen with the motor running?

Mr. Turkus: Objected to as to form.

Mr. Rosenthal: Now he objects to my abbreviating.

Mr. Turkus: There is an objection as to form.

3641

The Court: Overruled. (to the reporter) Read the question again.

(Pending question read by the reporter.)

The Court: That is improper. Sustained.

Mr. Rosenthal: I respectfully except.

Q. You were asked by the District Attorney relating to your entering into the park and seeing certain people there after you arrived there with the car. Do you recall that? A. Yes, sir.

3642

Q. The defendant Capone was not one of those people, was he? A. No, sir.

Q. You related also about the defendant Weiss and Strauss leaving at intervals, one at one time and then two at the other time, and returning? A. Yes, sir.

Q. And what was said to you by them and the directions that were given to you? A. I stood in the park there.

Q. You have already told that to Mr. Turkus, haven't you, how you went to Cohen's house in pursuance of having the address written out? A. That was after, when they came back together, sir. Said, "Let's make a good job out

of it," when Harry Strauss said he was afraid of the store. That is on Sutter Avenue and Bradford.

Q. You told the District Attorney, when he asked you questions, all you knew about those episodes, didn't you? A. Yes, sir.

Q. You also told the District Attorney all you knew about what happened while you were up in Cohen's apartment, as you described it? A. Yes, sir.

Q. You also told the District Attorney all you knew about in the morning going for the car and coming and standing in a hallway: is that right? A. Yes, sir.

Q. Now, from the place where you left the defendant Weiss and them on Saturday night, after Strauss had returned to the park, to where the so-called drop was, was a distance of how far?

3644

Mr. Turkus: I object to the form of the question.

The Court: Will you read it again?

(Pending question read by the reporter.)

3645

Mr. Rosenthal: Let me withdraw it and put it this way:

Q. Where were you when Strauss and Weiss, as you say, went around or left you and then came back? Where were you at that time? A. I was in the park with Jimmy Ferraco, and Farvel Cohen was there, sir.

Q. And the car was where? A. In Bradford and Blake, and Sutter.

3646

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Q. How far was that from the park? A. A half a block, sir.

Q. From the place where the car was parked to the place where you say the drop was was how far in distance? A. I didn't take no mileage, sir.

Q. Can you give us any idea; was it a short distance? A. I didn't take no mileage, sir.

Q. Well, you drove that car to the drop, didn't you?

3647

Mr. Turkus: Objected to as answered.

Q. From Bradford Street?

Mr. Turkus: Objected to as repetitious, and in that form argumentative.

The Court: It is too far afield. Sustained.

Mr. Rosenthal: I respectfully except.

3648

Q. How long a time elapsed from the time that you left these men at Bradford and the time you got to Cohen's apartment? A. What do you mean, sir?

Q. How long a time elapsed— Do you know what the word "elapsed" means? A. Yes.

Q. —between the time that you left Weiss, Strauss and Ferraco at Bradford, after they had returned in the evening of Saturday, and your going to the drop and to the apartment; how long a time took place?

Mr. Turkus: I object to that as complicated, unintelligible.

The Court: Did you time it?

The Witness: No, sir.

Mr. Rosenthal: I respectfully except.

Q. Can you give us any approximation of time that elapsed between the time you last saw them at Bradford and next saw them at Cohen's apartment? A. I didn't have a watch, sir.

Q. In the morning, when you were standing in front of—sitting in front of this candy store with the motor running, you then knew that the purpose of the men in going into that store was to shoot and kill Rosen, didn't you?

3650

Mr. Turkus: Objected to. That has already been answered.

Mr. Rosenthal: I have not asked anything regarding that.

Mr. Turkus: It is in the record.

The Court: Did you know who they were going to kill?

The Witness: I knew somebody was going to be killed, but I didn't know his name was Rosen.

The Court: Had anybody told you it was Rosen?

3651

The Witness: No, sir.

Q. But you knew they were in that store to kill someone?

Mr. Turkus: Objected to as repetitious. He has just said so.

Q. Did you purposely keep your head away from the front of the store while you had the

3652

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motor running, with the door open and the seat folded back?

Mr. Turkus: Objected to.

Q. Did you purposely keep your face averted from the store itself? Yes or no?

Mr. Turkus: I object to it.

The Court: Overruled.

3653

A. What do you mean, purposely?

The Court: Did you look inside of the store to see what went on?

The Witness: No, I didn't take notice of that store.

The Court: Do you remember what you were looking at?

The Witness: Looking in the front and happened to turn a little bit to see what was going on—you know what I mean—it took seconds to me: 1, 2, 3, and out, when they walked into the store.

3354

Mr. Rosenthal: Now, on the question of the Grand Jury minutes, I would like to make a motion to the Court, which is a legal question, in the absence of the jury.

The Court: What is the motion?

Mr. Rosenthal: The motion is in respect to having the District Attorney turn over to the Court the Grand Jury minutes, the testimony of this man before the Grand Jury.

The Court: Let me see it, please.

Mr. Turkus: Let them be marked for identification first.

The Court: Don't have to.

Mr. Turkus: I want them marked.

Mr. Rosenthal: So do I, want them marked.

Mr. Turkus: I will offer them in evidence.

Mr. Rosenthal: Again, because of the highly improper statement, I ask for the withdrawal of a juror and a mistrial. The District Attorney knows it is one of the elementary principles of law that that is the most reprehensible thing that he can say in a court-room.

3656

Mr. Turkus: He just said he wanted them marked.

The Court: He said he wanted them marked for identification, not in evidence. They cannot go into evidence, of course.

Mr. Turkus: I did not understand that—

Mr. Rosenthal: You said it three times.

3657

Mr. Turkus: —when he said he wanted them marked. I was contented that they go in.

Mr. Rosenthal: With that grin of yours.

The Court: I don't think you did.

Mr. Rosenthal: No, I don't think he did either.

Mr. Cuff: We join in the motion.

Mr. Barshay: All counsel join in that motion.

The Court: Motion is denied.

3658

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Mr. Cuff: Exception.

3659

Mr. Rosenthal: After the reading of the minutes by the Court, I would respectfully request the Court to give counsel the opportunity of reading these minutes for the purpose of further aiding counsel in the cross-examination of this witness on any matters that may have been either omitted, or any matters in which there may be statements other than that of the witness on the witness stand.

The Court: I will reserve on that until I read the minutes.

(Minutes marked People's Exhibit Z-1 for identification.)

Mr. Rosenthal: I respectfully request the Court, at the time of any argument or ruling on the subject, that the argument be in the absence of the jury. It is a legal question.

3660

The Court: I am going to ask all counsel to remain seated and quiet and the court-room in order, so that I will be able to read these minutes and know what is in them. There is no index on here. Is this all of the witness's testimony?

Mr. Turkus: That is all of this witness's testimony.

The Court: The entire 46 pages?

Mr. Turkus: Yes, and been compared.

The Court: Have I got to read these entire 46 pages, I am asking?

Mr. Turkus: I don't know how many

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3661

pages there are, but you have to read everything in your hand.

The Court: Is this that you have handed me all of this witness's testimony?

Mr. Turkus: It is, your Honor.

The Court: And not the testimony of other witnesses?

Mr. Turkus: No other witness, only this witness.

The Court: All right. It took a long time to get that. Everybody kindly remain in order.

3662

I am handing over up to and including page 24 for the perusal of counsel. The rest will be handed over after the Court reviews them and sees that everything is all right. I want to see if there is anything that should not be turned over, that is, something foreign to this case.

(Minutes handed to Mr. Rosenthal.)

The Court: The rest are handed over with the exception of pages 32 and 43. There seems to be a mistake here, suddenly jumping from 32 to 43.

3663

Mr. Turkus: That was where the witness had been recalled. I took that out of the bundle. That is an exact copy of the testimony of Bernstein, 10 to 32—

The Court: These pages that I mentioned, 32 and 43, contain the beginning and the ending of the testimony of another witness or witnesses?

Mr. Turkus: Yes, this witness Bernstein testified on pages 10 to 32—

The Court: Pardon me. These two pages will have to be deleted because they

3664

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contain, as to this witness, no contradictions or amplifications of testimony given here. The rest are handed over.

Mr. Rosenthal: May I have a few minutes to read it, Judge?

The Court: Yes, it won't take long. It took the Court 12 minutes.

3665

Mr. Rosenthal: I will try to do it in five, Judge. Judge, if I can have a five-minute recess, I want to refer to his testimony. There are certain particular contradictions that I want to take from his testimony here.

The Court: I noticed no contradictions, according to my recollection.

Mr. Rosenthal: I did, sir, and I want to have it from these minutes.

The Court: If you did, you don't have to look it up; you know it. Let us find out what they are.

3666

Mr. Rosenthal: All right. I would also request after recess that I have an opportunity to again review these minutes. It is very disconcerting to me to have to look at around forty pages right in the presence of the jury, knowing that everybody is impatient.

The Court: I think you are just as smart as the Court. The Court read them in twelve. You have had twelve. Now proceed.

Mr. Turkus: It is not forty pages; it is twenty-three pages. He was the fourth witness before the Grand Jury and started at page 10.

By Mr. Rosenthal:

Q. The only time that Muggsy Cohen was with you was the night that you drove the car and he took the radio out and you delivered him to his home; is that right?

Mr. Turkus: Object to it as repetitious.

Mr. Rosenthal: I have got to ask this now in order to form a basis for this contradiction.

3668

Mr. Turkus: That is the testimony. If there is any alleged contradiction, he can go right to it. We all have memories.

Mr. Rosenthal: May I ask the question, your Honor, or does your Honor sustain the objection?

The Court: It is much easier to let you have your own way.

Mr. Rosenthal: I am only asking for a ruling.

The Court: Let him answer it. Get it over with.

3669

Q. Do you understand the question? A. What did you say, sir?

The Court: Repeat it.

Q. (Pending question read by the reporter.)

A. Yes, sir.

Q. Didn't you tell the Grand Jury—Weren't you asked these questions and didn't you give these answers:

“Q. After having placed the car in the garage, what did you do next? A. The next morn-

3670

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ing we went back, me and Muggsy Cohen, and we took off the handle from the car and brought it to a locksmith to make up a key for the car.

"Q. A handle of the door? A. That's right."

Were you asked those questions in the Grand Jury and did you give those answers? A. Yes, sir.

Q. Was that true? A. I refreshed my memory—

Q. Or was it true what you said in this trial?

3671

A. I refreshed by memory a lot of things.

The Court: Does that refresh your recollection?

The Witness: Yes, sir.

The Court: Is it true?

The Witness: No, sir.

The Court: That was a mistake?

The Witness: That's right, that is what it is, a mistake, sir.

3672

Q. Now then, you told the Court and jury on this trial that at four o'clock in the afternoon Louis Capone had told you to come, he wanted to show you a route, and went in your car, and Louis Capone continuously drove your car. Do you remember telling the jury that here? A. Yes, sir.

Q. Now, were you asked (on page 50)—or, before I come to that, there is another thing. All right, I have got that question.

"Q. But at this time Louis Capone said, 'Come on, I want to show you the route'? A. That's right.

"Q. What route did he mean? A. How to go to the Rosen store and leave the car at Van

Sinderen and Livonia, drop the car off over there.

"Q. Did you go with him for that purpose?

A. Correct.

"Q. Who drove? A. I did.

"Q. And he rode with you? A. That's right."

The Witness: That is a mistake, sir.

Mr. Rosenthal: Wait a minute. I am asking you whether you were asked that in the Grand Jury and whether those are the answers that you gave to the Grand Jury.

3674

Mr. Turkus: He has just answered.

Mr. Rosenthal: Yes or no?

Mr. Turkus: It is responsive.

Mr. Rosenthal: It is not responsive.

The Court: He did not say whose mistake, so Mr. Rosenthal is entitled to know if he recalls having said that.

The Witness: Yes, sir.

Q. Did you say that? A. Yes, but it is a mistake, sir.

3675

Q. Did you say that to the Grand Jury? A. Yes, sir.

Q. That was not true, was it?

Mr. Turkus: Object to the form.

A. It is a mistake, sir.

Q. When you say it is a mistake, do you mean it was your mistake when you told the Grand Jury under oath that that is what happened, or do you mean that it was the stenographer in the Grand Jury room made the mistake? What

3676

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mistake do you mean, or whose mistake do you mean? A. I made the mistake, sir.

Q. You made it. All right. And the mistake which you made was in reference to who drove the car, is that right?

Mr. Turkus: Objected to. It has already been answered.

The Court: Sustained.

Mr. Rosenthal: Exception.

3677

Q. Was the time a mistake that you told the Grand Jury also, that it was in the evening at seven o'clock? Was that a mistake also?

Mr. Turkus: What page is this?

Mr. Rosenthal: The same page. If I could mark these out, your Honor—

Mr. Turkus: That is an exhibit. The part that you want is on page 16, in the middle.

Mr. Rosenthal: I think it is 14.

Mr. Turkus: Look at 16. It is in the middle. It does say seven o'clock, like you just said, so that is one for nothing.

Mr. Rosenthal: You mean you are helping me for nothing?

Mr. Turkus: Yes.

Mr. Rosenthal: Thanks very much.

Mr. Turkus: I am trying to save time.

Mr. Rosenthal: Beware of Greeks bearing gifts.

Mr. Turkus: I am not a Greek.

Mr. Rosenthal: Your Honor will have to pardon me a second. I have got to get the connecting questions.

3678

Q. What time was it that you say that you went back to Sackman and Livonia and met Strauss and told him that you had stolen the car?

Mr. Turkus: Objected to as repetitious.

Mr. Rosenthal: This is preliminary, as a foundation for these questions.

Mr. Turkus: It is not needed. If there is any inconsistency he can bring it right out. Wasting time.

By the Court:

3680

Q. Do you remember what time? Did you time it when you kept the appointment to go over the route? A. What do you mean?

Q. Did you time it? Did you make any note of the time that you went over the route? A. No, sir.

Q. Can you approximate, according to your best recollection? A. I really can't tell you, sir. I didn't clock it.

Q. And you were told, you say, to go back there at four o'clock? A. Four o'clock I went back, yes.

3681

Q. Do you recall what time you went out on the route? A. Four o'clock, a quarter after four, something like that.

Q. Do you remember you were promptly on the job? A. Yes.

By Mr. Rosenthal:

Q. It was daylight, wasn't it, four o'clock? A. Yes, sir.

Q. And it was dark at seven o'clock, wasn't it?

3682

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Mr. Turkus: Objected to, repetitions.

Mr. Rosenthal: I have not asked him that.

The Court: That is a matter of calendar. Daylight saving was still in effect on September 15th.

Mr. Rosenthal: I respectfully except.

3683

Q. Were you asked before the Grand Jury these questions and did you give these answers—before I ask you these questions, you told this jury that Louis Capone told you to steal the plates, didn't you? A. Yes, sir.

Q. And that Harry Strauss said nothing when Louis Capone told you that?

Mr. Turkus: Objected to as repetitions.

Q. Now, on page 14.

"Q. After that what did you do? A. After that I went back to Sackman and Livonia and told Harry Strauss I had the car.

3684

"Q. Was anybody with him when you had that conversation? A. Louis Capone.

"Q. What time of day was that? A. It must have been about seven o'clock at night."

Were you asked those questions by the Grand Jury and did you give those answers? A. Yes, sir; it was a mistake, sir.

Q. That was a mistake? A. Yes, sir.

Mr. Rosenthal: It does not say when this testimony was taken.

Mr. Turkus: May 20, 1940.

Mr. Rosenthal: May it appear on the

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3685

record that the exhibit Z-1 for identification was testimony taken on May 20, 1940?

Mr. Turkus: Lillian R. Cohen, stenographer of Grand Jury; Edward A. Heffernan, Esq., Assistant District Attorney.

Q. Did you tell this jury that Louis Capone told you to steal the plates before you went out on this route to be shown the route that you were to take?

3686

Mr. Turkus: Objected to as repetitious.

The Court: Well, the Court can say that he didn't. The record is that after the seven or eight rehearsals, they returned to Sackman and Livonia and Strauss came over and Capone then told him to steal the plates, with further instructions which are on the record.

Mr. Rosenthal: I take your Honor's statement.

The Court: That is the record.

Mr. Rosenthal: All right, sir, if that is the record.

3687

Q. Were you again asked before the Grand Jury (on page 16 and 17) as follows:

"Q. When you got back to Sackman and Livonia Louis Capone was still with you? A. That's right.

"Q. Did you meet somebody there? A. Harry Strauss.

"Q. Anybody else? A. No.

"Q. Was there a conversation there then? A. That is correct.

2688

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"Q. Please tell me what the conversation was?

A. Harry told me to go and steal license plates for the car.

"Q. Was Capone there when that was said?

A. That is right.

"Q. Is that the full conversation at that time?

A. That is right.

"Q. Then what did you do? A. He said steal license plates and come back eleven o'clock with the car on Sackman and Livonia."

3689

Were you asked those questions and did you give those answers?

Mr. Turkus: I don't think there is any inconsistency.

Mr. Rosenthal: Why, on this trial he said that Harry Strauss stood by and said nothing and Capone asked him to go and steal the plates.

The Court: Overruled.

3690

Q. Were you asked those questions before the Grand Jury and did you give those answers? A. Yes, sir; it was a mistake.

Q. On this trial you say that a man whom you believe was Joe Pileh came up while you were standing with Strauss and others and handed Strauss a package which you subsequently found to contain guns and that you were delivered the package by Strauss and that you put the package in your car. Did you not, insubstance, say that on this trial?

Mr. Turkus: I object to it. It is repetitious and not a correct version of what the witness has said, in that summary.

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3691

The Court: What is the fact; who put them in the glove box?

The Witness: I did. Harry Strauss gave them to me.

The Court: Is your memory now clear on that?

The Witness: Very good now, sir.

The Court: Any doubt whatever?

The Witness: No doubt. My memory is very refreshed now, sir.

3692

Q. Did you also tell this jury that there was a doubt in your mind as to whether the man who came up and gave the package was a man by the name of Joe Pileh? Did you tell that to this jury?

Mr. Turkus: I object to it. That is not a correct version. He said, "I think it was Joe Pileh."

Mr. Rosenthal: This is cross-examination.

Mr. Turkus: I object to it. It is a repetition that will go on endlessly.

3693

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. Now I ask you—

Mr. Turkus: Page 18.

Mr. Rosenthal: Thanks.

Q. "Q. (On page 18) Having seen this group go, was there a conversation? A. That's right.

"Q. Tell me what the conversation was? A. The conversation was at first Harry Strauss told

3694

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some fellow by the name of Joe Pilch to bring the guns over to the car.

"Q. Did you know Joe Pilch up to this time?

A. That is right.

"Q. And Joe was there at the time? A. That is right.

"Q. And what did Joe Pilch do? A. He brought the guns in a package and gave it to Harry Strauss and he put the package in the car, in the little box.

3695

"Q. Is that the glove compartment? A. That's right."

Were you asked those questions by the Grand Jury and did you give those answers?

Mr. Turkus: That is trivial.

Mr. Rosenthal: I again except to the statement of Mr. Turkus.

Mr. Turkus: That is an objection.

Mr. Rosenthal: Is it an objection? Well, I have one to make also.

The Court: Overruled. Is that what you testified to in the Grand Jury?

3696

The Witness: Yes; that is a mistake, sir.

The Court: Was that your belief at that time?

The Witness: Yes, sir, at that time, sir. Now my memory is refreshed because they hollered at me, sir. I got a two-door car. That's the time Mendy Weiss hollered at me.

The Court: You mean since then it has come more clearly to your mind?

The Witness: Yes, sir, very clear, very clear.

Q. How long had you known Joe Pilch before 1936?

Mr. Turkus: Objected to, repetitions.

Mr. Rosenthal: He said it is very clear now, Judge, so I want to now find out whether when he told this jury he thinks it is Joe Pilch—

The Court: I am not quibbling on questions whether he thinks or whether he thought before the Grand Jury. It is substantially the same, or on the item of whether or not Strauss handed him the guns and he put them in the glove box or whether Strauss put them in the glove box, if that is of any importance whatever. He says now he is clear that Strauss put them in the glove box. Objection sustained.

3698

Mr. Rosenthal: I respectfully except to the Court's remarks and the sustaining of the objection.

By the Court:

3699

Q. You say now that you are sure you put them in the glove box? A. Yes, sir, positively.

Q. You handled them? A. Yes, sir.

Q. That has become clear since you testified before the Grand Jury? A. Yes, sir.

Mr. Turkus: Your Honor—

By Mr. Rosenthal:

Q. Had there been any conversation concern-

3700

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ing Louis Capone being at the scene prior to the time that you went over to the store? A. Yes, sir.

Mr. Turkus: I object to this. I do not know what it means.

The Court: You mean on Sunday morning?

Mr. Rosenthal: I mean Saturday or Sunday.

3701

The Court: Sustained as indefinite.

Mr. Rosenthal: I respectfully except, sir. May I have noted on the record that at the time this question was asked, I had the Grand Jury minutes?

The Court: If you will put the question and answer that appeared in the Grand Jury minutes to the witness, I may be able to call your attention to where the testimony is on that point as given in this trial.

3702

Q. On page 28 were you asked this question: "Q. Had there been any conversation concerning Louis Capone being at that scene prior to the time you went over to the store? A. I didn't hear nothing."

Were you asked that question in the Grand Jury and did you give that answer?

Mr. Turkus: I object to it. What is inconsistent?

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. Do you know a Kingsway Garage? A. Kingsway?

Q. Yes. A. What do you mean a Kingsway Garage?

Q. Do you know a garage by the name of Kingsway? A. I don't recall it, sir.

Q. Were you asked in the Grand Jury this question (page 28) and did you give this answer:

"Q. Where did you go with Jimmy? A. Jimmy? At first I drove to a garage, Kingsway Garage, took the gun from Jimmy and brought it down to a cellar that Mendy gave Jimmy."

3704

Mr. Turkus: May I call your Honor's attention that the testimony here was the Kenwood Garage? Kingsway and Kenwood in stenographic notes may have been confused by the stenographer.

Mr. Rosenthal: Again we have Mr. Turkus testifying on the record, again not under oath, and I again except to his statement made to the Court and ask that it be stricken.

The Court: Isn't that the same location precisely?

Mr. Rosenthal: I don't know. I know there is a Kingsway Garage.

3705

The Court: You are not confusing it with the Kingsway Theatre, by any chance?

Mr. Rosenthal: No; there may be a Kingsway Theatre. I think your Honor is more acquainted with that than I would be.

The Court: The picture is there. What street do you say that is, Mr. Turkus?

Mr. Turkus: Portal Street and East

3706

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New York Avenue. It is the Kenwood Garage.

The Court: That is a stenographic error or slip of the tongue?

The Witness: I said Kenwood. It must be a mistake, sir.

Mr. Turkus: There is other misspelling of names in testimony.

3707

Mr. Rosenthal: May I request of the Court that if there is anything overnight that I be given a copy of these for my perusal overnight, if there should be—

The Court: I am not going to have this witness brought here again.

Mr. Rosenthal: I am not going to ask that. I merely ask if there is anything that I have a copy of these in my possession overnight so that I can call the attention—

The Court: Don't worry now. We are no way near closing, according to the rate of your cross-examination.

3708

Mr. Rosenthal: I am nearly closing with this witness.

The Court: Suppose you go right ahead.

Mr. Talley: I suppose that on behalf of the defendant Weiss, my examination of this witness, together with the minutes which your Honor withheld, if they have any reference to Weiss—

The Court: What other minutes? At this moment I do not know what other minutes you refer to.

Mr. Talley: I assume, sir, that I may have an opportunity—

The Court: I am not deaf. I heard what you said but I do not understand you.

Mr. Talley: I thought I spoke pretty plainly. I will try it again.

The Court: You wish to see the minutes. I handed them over to counsel. You are entitled to see them, of course.

Mr. Talley: That is all I want to know. Now I will go a step further. Your Honor said you were withholding certain pages of the testimony of this witness—

3710

The Court: Two pages.

Mr. Talley: I ask they be delivered to me.

The Court: I said I had deleted two pages which related to the testimony of a different witness, that there was a small amount of testimony given by this witness on each one of those pages which contained no contradiction or variance of any kind.

Mr. Talley: I ask nevertheless, if your Honor pleases, if they are part of the testimony of this witness that I now see them.

3711

The Court: The Court will show them to you at the bench, at the proper time, and you will be satisfied.

Mr. Turkus: Four questions and answers.

The Court: Don't have any more delay. Everybody's rights will be preserved.

3712

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By Mr. Rosenthal:

Q. Now, Mr. Bernstein, do you know a man by the name of Ben Warshinsky?

The Court: Are you through with the Grand Jury minutes?

Mr. Rosenthal: I am through with them temporarily.

The Court: Will you pass them on to Judge Talley?

3713

Mr. Rosenthal: I have not had a proper opportunity to see whether or not there are other contradictions that I might consider important.

Mr. Turkus: May the record show how long he has had those Grand Jury minutes?

Mr. Rosenthal: Yes, and if you want to make it longer, but I cannot digest those minutes, go over those minutes properly with a jury which I know will get impatient and with the Court having the jury in session here.

3714

The Court: Yes, you have had lots of time. You have had fifteen minutes.

Mr. Talley: I cannot follow the cross-examination as I should and examine these minutes at the same time. I ask to be given these minutes overnight so I can examine them.

The Court: I will not rule on that now.

By Mr. Rosenthal:

Q. Do you know a man by the name of Ben Warshinsky? A. Yes, sir.

Q. 306 Osborne Street?

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3715

Mr. Rosenthal: I ask the Court to permit this witness to have a paper and pencil and to write the name Ben Warshinsky, 306 Osborne Street.

The Court: First mark a paper for identification.

(Blank paper marked Defendants' Exhibit O for identification.)

(Witness writes.)

Q. I now ask you to write Ben Glass Schatz (phonetic spelling). You know how to spell it, don't you?

3716

(Witness writes.)

Q. 39 East 92nd Street, Bklyn., N. Y. Have you got it? A. Yes, sir.

Q. I want you to write the word "Sunday".
A. Sunday?

Q. Yes, Sunday. A. (Witness writes.)

Q. And I want you to write the word "Ben".
A. (Witness writes.)

3717

Mr. Rosenthal: I ask that it be marked in evidence. The materiality will be shown in two minutes.

Mr. Turkus: Not at this point it is not admissible.

The Court: Is there an objection?

Mr. Turkus: There is.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

Q. You told this jury that you have been kept incommunicado—I withdraw that. You told this

3718

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jury that you never were allowed to write a letter, you never were allowed to be alone with a pencil or paper, that you never sent out a letter, and that you never communicated with the outside world since you gave yourself up to Judge O'Dwyer?

Mr. Turkus: Objected to.

Q. Is that right, sir?

3719

Mr. Turkus: Objected to. It is not a correct version. If it is, even at that, it is repetitious.

The Court: I don't recall whether it is or not. Did you say so?

The Witness: Yes, sir.

The Court: Is that your best recollection? Just put your memory on that and see if you remember any time when you wrote to anybody.

The Witness: Yes, I did, sir.

The Court: When was that?

3720

The Witness: About four or five letters, sir.

Q. Keep your voice up so that the jury can hear you. A. About four or five letters, sir.

Q. You sent out four or five letters? Let me call your attention to whether or not to this jury, when I started to cross-examine you, you were asked these questions and you gave these answers—

Mr. Turkus: I object to it. That is repetitious.

Mr. Rosenthal: I have not finished the question yet, sir.

Mr. Turkus: That does not give him license—

Mr. Rosenthal: Why, when Mr. Turkus goes that it gives him the privilege—

Mr. Turkus: Your Honor, I have an objection before the court.

The Court: What is it?

Mr. Turkus: I object to him reading the record that was taken earlier of this witness. It is repetitious. He has admitted he said those things.

3722

Mr. Rosenthal: He has not. Page 785, sir. Now I am in the midst of a question. May I, with the court's permission, continue the question?

Mr. Turkus: I have an objection to reading the record. The jury heard it.

The Court: Overruled.

Q. Now, listen to this. Were you asked these questions when I first started to cross-examine you (page 785 of this record):

3723

“Q. You say you were always under guard?
A. Yes, sir.

“Q. Did you write any letters while you were under guard? A. No, sir.

“Q. At no time did you write letters or send them out to anybody? A. No, sir.

“Q. That is positive, is it? A. Yes, sir.”

Mr. Turkus: Will you modulate your tone, please?

Mr. Rosenthal: Excuse me. Before I

3724

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did not talk. I will get over where it won't annoy you. You are not going to disconcert me.

"Q. You had no communication whatsoever with the outside world, is I think your expression? A. Yes, sir.

3725

"Q. You never wrote a letter to anybody while you were in custody and gave it to your wife or to any detectives or any person to mail? A. No, sir.

"Q. That is right? A. Yes, sir.

"Q. (On next page) Were you permitted to write letters? A. No, sir.

"Q. Were you permitted to send out mail? A. No, sir.

"Q. Were you ever left alone with your wife at any time so that you could give her a letter? A. No, sir.

"Q. At all times there was always a detective there? A. Yes, sir.

3726

"Q. At no time did you ever write to anybody while you have been incarcerated, or kept, I should say, in the Half Moon Hotel, or any other hotel that you have been kept in while you were a material witness, is that right?"

That was sustained. I withdraw that last question.

Mr. Turkus: Now, just a minute.

Q. You were asked those questions, were you not, and do you remember giving this jury and this court those answers?

Mr. Turkus: Objected to. He has not said he did not.

The Court: That is the record.

Mr. Turkus: Yes.

Mr. Rosenthal: The question is whether he did, Judge, before I submit certain documentary evidence which I have and—

The Court: I never heard of such a thing in the orderly process of a trial as having to prove the record of the present trial by the testimony of the witness all over again.

3728

Mr. Rosenthal: I respectfully except.

The Court: Everything the witness has testified to is a part of the record.

Q. Did you threaten anybody in letters that you wrote out of the Half Moon Hotel while you were under guard there? Did you threaten any people on the outside?

Mr. Turkus: I object to it. It is repetitious.

3729

Mr. Rosenthal: Oh, no.

The Court: Overruled.

Mr. Turkus: It is incompetent.

Q. Did you? A. What do you mean, threaten?

Q. Did you write letters to individuals on the outside on the stationery of the Half Moon Hotel, get them out with the mail, the United States mail, in which you had threats against individuals contained in it, individuals other than these defendants? A. Wait a minute.

3730

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Mr. Turkus: I object to the form of the question. That is a tricky question.

Mr. Rosenthal: Is it?

Mr. Turkus: Yes.

Mr. Rosenthal: We will see how tricky it is in a minute.

Mr. Turkus: That is tricky enough to appear as if he threatened the defendants.

Mr. Rosenthal: I am going to show to the court, if your Honor wishes—

3731

Mr. Turkus: I have an objection and I do not want any more theatrical reading of records and Mr. Rosenthal prancing from one end of the court room to the other, shouting in counsel's ear.

The Court: The witness asked you what you mean by threats. That is a matter—

Mr. Rosenthal: Well, all right.

The Court: Are you interrupting the court?

Mr. Rosenthal: Excuse me, your Honor.

3732

The Court: That is a matter of debate. One person may say that something written is a threat and another may not. You may direct his attention to what he is alleged to have written. The jury can say whether it is a threat.

Q. I will show you this letter—

Mr. Turkus: First mark it for identification. Do it orderly; take it easy.

Mr. Rosenthal: If I was as old as you

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3733

when you were young. I would have you on my knee.

Mr. Turkus: That is old stuff. I will outgrow my youth in time.

Mr. Rosenthal: You will never outgrow your ignorance.

Mr. Turkus: Thank you.

Mr. Rosenthal: I am just showing him that to ask if it is his handwriting. I ask the court to instruct him not to read it but merely to identify whether or not he wrote that letter while he was in the Half Moon Hotel.

3734

The Court: How can he tell without reading it?

Mr. Rosenthal: He can tell whether it is his handwriting.

Mr. Turkus: Without reading it?

Mr. Rosenthal: He has to read the letter?

Mr. Turkus: That happens to be a photostat.

Mr. Rosenthal: Does it?

3735

The Court: What is the question?

Mr. Turkus: He wants to know if it is in his handwriting.

Mr. Rosenthal: Thanks, Mr. Turkus.

The Court: There is no question before the court.

(Two papers marked Defendants' Exhibits P and Q, for identification.)

Q. I show you this envelope first, marked Defendants' Exhibit Q, for identification, and ask you if that envelope is in your handwriting, a

3736

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photostatic copy of an envelope in your handwriting. A. Yes, sir.

Mr. Rosenthal: I offer it in evidence.

Mr. Turkus: May I see it?

The Witness: I can explain why I did not want to tell you.

Mr. Rosenthal: I ask that this witness be instructed not to answer anything unless he is asked, your Honor.

3737

Mr. Turkus: I consent to it.

The Court: The District Attorney is entitled to ask for explanations at the proper time. Until then nothing can be volunteered.

Mr. Turkus: Is there another photostat of this available? No objection.

Mr. Rosenthal: May I show it to the jury?

The Court: Mark it in evidence.

(Defendants' Exhibit Q, for identification, received and marked Defendants' Exhibit I, in evidence.)

3738

Q. Was that envelope addressed by you in the Half Moon Hotel and a letter enclosed in it and sent out? A. Yes, sir.

Q. Who is Ben? A. That is Cherry's brother.

Q. And Cherry is the man, Al Glass, your partner, isn't he? A. Yes, sir.

Q. Did you write a letter—read this letter.

The Court: Mark it for identification.

Mr. Rosenthal: It has been marked Defendants' Exhibit P, for identification.

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3739

The Witness: What is so terrible about this letter?

Mr. Turkus: Let me read it.

The Court: What?

Mr. Rosenthal: He said, "What is so terrible about this letter." That is his answer.

The Court: Did you write it?

The Witness: Yes, sir.

Q. Did you send that out from the Half Moon Hotel while you were under guard; yes or no?
A. Yes, sir.

3740

Mr. Rosenthal: I offer it in evidence.

Mr. Turkus: Let me read it. This has nothing to do with the Rosen case.

The Court: Is there objection, or what?

Mr. Turkus: There is an objection. It has nothing to do with this killing we are trying.

The Court: Where is the rest of it? The court cannot judge as to the relevancy or competency of the letter without the rest of it. There are only two pages and it is not signed and does not appear to be a complete letter.

3741

Mr. Turkus: It is a photostat.

Mr. Rosenthal: That has no materiality, whether it is or not. This witness has identified it as a letter sent out by him in the ordinary course of the mail from the Half Moon Hotel.

The Court: Don't tell the court what the court already knows. I am asking for

3742

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the rest of the letter so I can tell whether it is relevant or competent.

Mr. Rosenthal: That is all of that letter.

3743

The Court: There is some more of it. It is only two pages of a letter which is not signed and which stops abruptly and there is no termination of the letter to indicate anything that the court can base judgment on. Frankly, I don't know what the two pages, in the absence of the rest of the letter, mean. Objection sustained.

Mr. Talley: May I be heard on that?

The Court: Yes.

3744

Mr. Talley: This letter is introduced for the purpose of impeaching this witness' testimony on this trial, to wit, that he never sent out any communications while he was in custody in the Half Moon Hotel. This paper which you are now examining has been identified by this witness as having been written by him and as having been sent in the envelope that he has identified, and which he said is in his handwriting. On the question of the impeachment of the witness and the question of his credibility, if that was only one line of a letter instead of a complete letter, it would be competent to attack his credibility and show that he testified to one thing on this trial whereas the fact, as he now admits, is quite the contrary, to wit, he testified he sent out no letter and had no communication with the outside world, and here is a paper in his handwriting which he did send out through

the United States mail. That is the purpose of impeachment.

The Court: That impeachment is already established. Supplemental to that impeachment, Mr. Rosenthal has offered this part of a letter.

Mr. Rosenthal: May I further urge the proposition that this man on the stand, as appears by the record has admitted that this is a letter which he wrote.

The Court: You are putting in a part, and I cannot tell from reading that part whether it relates to this case or not.

3746

Mr. Talley: If your Honor pleases, it would not make a bit of difference.

The Court: The rest of the letter must be submitted before the court can pass on it. He has admitted now that he lied. You do not have to establish that. Now, don't put the court in a false position. You are not going to put in, in order to create an inference which may be misleading to the jury, a piece of a letter and have the jury devour its contents. It is established that the witness testified under previous cross that he did not send out a letter and now he admits that he did.

3747

Mr. Turkus: Why not let the witness complete the letter and tell the jury what the balance of it was, if there was any? It may have been a complete letter.

The Court: It is up to counsel to produce it. Objection sustained.

Mr. Talley: I except.

Mr. Rosenthal: And at this particular

3748

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time I am asking now—it is a quarter to four—for a recess. I intend to attempt to produce other letters of this man.

The Court: You proceed. I am going to sit late today. You are not entitled to ask for an early adjournment because there has been too much time wasted.

Mr. Rosenthal: I respectfully except to the court's ruling, insofar as this matter is concerned.

3749

The Court: The tempo has been *largo minus*.

Mr. Rosenthal: I did not hear that.

The Court: The stenographer will repeat it.

(The remark of the court was read by the stenographer.)

Mr. Rosenthal: I ask that this sample of handwriting, Defendants' Exhibit O, for identification, be marked in evidence.

3750

Mr. Turkus: I object to it. He has already admitted that he wrote a letter, although early in his testimony he denied he did, so that this exhibit has no relevancy or competency.

The Court: Sustained.

Q. I show you this paper, Defendants' Exhibit P, and ask you, Mr. Witness, whether that was not the end of that particular letter, those two pages.

Mr. Turkus: I object to it. It is incomplete on its face.

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3751

Mr. Rosenthal: I object to any statement—

Mr. Turkus: Just a minute—

Mr. Rosenthal: By the District Attorney.

Mr. Turkus: And it is intended as a slight to the court, which said it is incomplete on its face. That is reprehensible. That is not the way I was taught to practice law.

Mr. Rosenthal: You stoop too low—

3752

The Court: Did you send the letter without signing, Mr. Witness?

The Witness: No, sir.

The Court: Look at the bottom of page two. You notice it is not signed?

The Witness: My name is not there, sir.

Q. Did you put your name on that particular letter? A. I can't tell you that, sir.

Q. Is that the complete letter— Read it through—that you sent out at that particular time? A. Yes, sir.

3753

Mr. Rosenthal: Now, I offer it in evidence.

The Court: Why didn't you sign it?

The Witness: I did sign it.

Mr. Rosenthal: I object to that, if the Court pleases.

The Court: Obviously, this is a part of a letter. Now he says he did sign it, but his signature is not there.

Mr. Rosenthal: I except to the statement of the court.

3754

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The Court: Where is the signature?

The Witness: It is supposed to be here.
I don't see it.

The Court: It is not there, is it?

The Witness: No, sir.

The Court: On what do you base your statement that that is a full letter?

The Witness: I cannot tell you that, sir.

Mr. Rosenthal: I renew the offer, sir.

3755

Mr. Turkus: I object to it. There was a matter of collateral impeachment first.

The Court: Please don't argue so much.

Mr. Turkus: All right. I have an objection.

The Court: The court is quite competent to rule on questions of law involving matters of mediocre intelligence on the part of the court without having counsel get into a brawl and argue every point to the court. That only confuses and delays the situation.

3756

By the Court:

Q. Mr. Witness—

The Court: Will you kindly sit down?

Mr. Rosenthal: Yes, sir.

Q. Do you remember that letter? A. Yes, sir.

Q. Will you see if you can find your signature on it? A. No, there is no signature, sir.

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3757

Q. Did you ever send a letter to this party unsigned? A. Always signed, sir.

Q. Always signed? A. Yes, sir.

Q. When you said a few minutes ago this was the entire letter, were you right or were you wrong? A. This is not the letter, sir.

Q. Is that or is that not the entire letter? A. No, sir.

The Court: The ruling stands.

Mr. Rosenthal: Exception.

3758

By Mr. Rosenthal:

Q. Did you say a minute ago it was the entire letter?

The Court: I know what he said a minute ago, and the incident is closed.

Mr. Rosenthal: I respectfully except—

Mr. Talley: I except.

Mr. Rosenthal: —to the Court's ruling on the subject and the Court's interrogation of this witness after he had stated it was the letter.

3759

Q. Did you ever, in the letter that you sent out while under guard, threaten, if you did not get \$200, that you would cause trouble for individuals?

Mr. Tarkus: I object to it. That is an indirect way of trying to put in evidence something not able to be done by direct—

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

3760

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The Court: The word "threaten" is a conclusion.

Q. Look at the bottom of this paper.

Mr. Rosenthal: First mark it for identification.

(Paper marked Defendants' Exhibit R for identification.)

3761

Mr. Rosenthal: I am asking that the witness see it.

Mr. Turkus: Let me see it.

Q. Look at the last part and see whether you signed it with your signature.

Mr. Turkus: I object to, by indirection, putting anything into evidence that cannot go in directly.

The Court: Overruled. Where are the originals of these letters?

3762

Mr. Rosenthal: I have not got them, sir.

The Court: That means nothing. I asked you a question; I ask for the courtesy of an answer.

Mr. Rosenthal: I don't know, sir.

The Court: Under the rules of evidence the originals must be produced or their absence accounted for as unproducible, in order to enable the copy to go into evidence, even though fully authenticated otherwise.

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3763

Mr. Rosenthal: I know of no rule, your Honor, which prevents a photostatic—

The Court: I am not obliged to be responsible for what you do know or do not know.

Mr. Talley: Your Honor, these photostats are admitted to be correct by this witness, the writer of them.

The Court: The Court is aware of the record. What is your question?

3764

Q. (Pending question read by the reporter.)

A. Yes, sir.

Q. Is that a complete photostatic copy of a letter which you sent out while you say you were under guard in the Half Moon Hotel, to a person to whom it is addressed?

Mr. Turkus: Objected to.

The Court: How can he tell unless he reads it? Sustained.

Mr. Rosenthal: I did not ask him not to read it, sir.

3765

Q. Read it first. A. I am not sure, sir.

The Court: Read it.

The Witness: I am not sure, sir.

By the Court:

Q. Did you read this over? A. Yes, sir.

Q. Surely you ought to be able to remember whether you wrote that. A. I don't recall, sir. That is my signature there.

3766

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Q. Read the context. You cannot fail to know. Can you see it? A. Yes, sir. Yes, sir.

Q. You wrote that letter? A. Yes, sir.

Mr. Rosenthal: Now I offer it in evidence.

Mr. Turkus: Let me see it.

Q. You wrote that from the Half Moon Hotel?

A. Yes, sir.

3767

Q. Do you remember how long ago? A. I really cannot tell you, sir.

Q. Is it while you were in custody? A. Yes, sir, a detective beside me, sir. He seen it, sir.

Mr. Turkus: It is objectionable on the grounds urged in connection with the other exhibit, and further it is not an original document.

The Court: Sustained as having nothing to do with this case, incompetent and irrelevant.

3768

Mr. Rosenthal: I respectfully except to the Court's ruling.

Mr. Turkus: I ask that these photostatic copies be impounded by the Court.

The Court: You cannot—

Mr. Rosenthal: You can impound them by putting them in evidence.

Mr. Klein: That is not impounding them.

Q. How many more letters did you write while in custody and under guard to different people, from the Half Moon Hotel?

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3769

Mr. Turkus: Objection, incompetent, irrelevant, immaterial.

The Court: Overruled.

A. About four or five letters all told, sir.

Q. To how many different people did you write letters? A. Just two, sir.

Q. Who were the two that you wrote letters to?

Mr. Turkus: Objectionable. It is incompetent, irrelevant, immaterial.

3770

The Court: Sustained.

Mr. Rosenthal: Respectfully except.

Q. Did you demand money in letters that were sent out while you were under guard, from people that you wrote to?

Mr. Turkus: I object to it. That by indirection is attempting to put something in that is improper.

The Court: Sustained.

Mr. Rosenthal: Exception.

3771

(to Mr. Turkus) Will you turn around?

Mr. Turkus: No, I want to watch you. I do not like to have my back turned to you.

Mr. Rosenthal: Your back is better than your face.

Mr. Turkus: Thank you.

Mr. Rosenthal: If I had to look at your face all day, I would not be able to cross-examine. I will stand over here where you can see me and I do not have to look at you.

3772

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Mr. Turkus: That ought to be pleasurable.

Q. Did the detectives that were guarding you in the same room see you writing letters that were sent out?

Mr. Turkus: I object to it as incompetent, irrelevant, immaterial.

Mr. Rosenthal: It is on impeachment now.

3773

The Court: Sustained.

Mr. Rosenthal: Respectfully except.

Q. Were those letters which you mailed out from the Half Moon Hotel and while you were under guard, given to detectives to mail?

Mr. Turkus: I think that is insulting and venomous, and I object to it.

The Court: It is immaterial.

Mr. Turkus: Incompetent, irrelevant and immaterial.

3774

The Court: He had a right to write letters.

Mr. Turkus: Of course he did.

The Court: There is no law against it, no expression against it.

Mr. Rosenthal: I object to the Court's remark and to the District Attorney's remark.

The Court: It would be a funny kind of house of detention if you could not write a letter and if you were not entitled to have them mailed.

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Mr. Rosenthal: That is not the issue here, sir.

The Court: No.

Mr. Rosenthal: I will mark another letter for identification.

(Paper marked Defendants' Exhibit S for identification.)

Q. I show you that letter and ask you whether you sent that out while you were under guard, in the presence of detectives.

3776

Mr. Turkus: I object to the form of the question.

Mr. Rosenthal: Asking the question—

The Court: Wait.

A. I don't recall the letter, but my signature is on there, sir.

Mr. Turkus: I have an objection to the question first.

By the Court:

3777

Q. Is the letter in your handwriting? A. But I don't recall the letter.

Q. Did you read it? A. Yes, sir.

Q. Does it bring back to mind in its contents whether you wrote it? A. Yes, sir.

By Mr. Rosenthal:

Q. And is it a complete letter?

The Court: This is signed and has a "P. S."

3778

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Mr. Rosenthal: I want it for the record, your Honor, with your permission.

Q. Is that a complete letter? A. I don't recall it, sir.

Mr. Turkus: May it also be noted on the record it is a photostat, not the original.

The Court: Photostat, yes.

Mr. Turkus: May I see it?

3779

The Court: Is it offered in evidence?

Mr. Rosenthal: Yes, I am offering it.

The Court: That is, the photostat?

Mr. Rosenthal: Yes, I am offering the photostat of a letter which he identifies to be in his handwriting and a complete letter.

Mr. Turkus: Objected to. It has nothing to do with the Rosen killing.

The Court: Sustained.

Mr. Rosenthal: I respectfully except.

3780

May I have that on the record? I am going to ask your Honor to admonish this individual not to be so free with his language, because of the fact that he now happens to be an Assistant District Attorney, whereas formerly he practiced on this side of the bar. We have more courtesy from men in the District Attorney's office than he will ever give to anybody, and it is about time he is taught manners.

Mr. Turkus: It seems I have been on the receiving end of all abuse.

Mr. Rosenthal: Vile and low and abusive. That is all he says. Let him stick to the case.

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Mr. Turkus: Now I am down to a correspondence course.

Mr. Rosenthal: And insulting everybody that opposes you.

The Court: This sounds like an up-to-date political speech. The Court will disregard it. It is out of order.

Mr. Rosenthal: I have no further questions to ask this man.

The Court: Judge Talley?

Mr. Talley: Before I proceed any further—

3782

Mr. Rosenthal: I ask that Mr. Klein be asked to face toward the front of the room.

Mr. Klein: I will face where I have a right to.

The Court: The Court is hearing Judge Talley. Kindly come to order.

Mr. Talley: Your Honor has stated from the bench that this witness has testified falsely with regard to sending the letters?

3783

The Court: Yes.

Mr. Talley: Your Honor stated—I think the language was—that he has lied before this jury.

The Court: Yes. That is obvious.

Mr. Talley: It is therefore incumbent upon me, it is obvious to the Court, and I now not only request, but in the politest manner possible demand that your Honor sit as a committing magistrate and commit this witness to jail, not to the Half Moon Hotel, but to jail, on the charge of

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perjury or at least false swearing, which your Honor has heard himself in the presence of the Court, in the presence of this jury, which is a crime committed in your presence, and I demand, as I say, that your Honor act according to the circumstances and commit this witness to jail for false swearing.

3785

The Court: You would like him moved from the Half Moon down to Raymond Street?

Mr. Talley: I would like him committed for the perjury that he has committed in this case. I do not care where your Honor commits him.

The Court: I think you'd better not do any worrying about perjury. The Court is able to attend to its own business without advice. You confine yourself to the trial of this case.

Mr. Talley: I move that this witness be committed for perjury.

3786

The Court: The motion will not be entertained because you have no business to make it. It is none of your concern.

Mr. Talley: I am an officer of this court just as much as your Honor is.

The Court: As an officer of the court, proceed with the Court's instructions. Proceed with the case. This is grandstand play, and utterly cheap.

Mr. Talley: I must take an exception to that remark of your Honor.

The Court: Please proceed with the case.

Mr. Talley: I am not given to grand-

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3787

stand plays and I think nobody in this building knows it better than you do.

The Court: Do you wish to continue the examination?

Mr. Talley: Yes, I do.

The Court: Proceed.

By Mr. Talley:

Q. You remember testifying, Bernstein, in this case, in this room, that you got the address of Farvel Cohen's apartment where you went and slept on the rugs the night before Rosen was killed? A. Yes, sir.

3788

Q. And you remember that you testified that that name and address, or at least the address of Cohen's apartment house was written down on a slip of paper by the defendant Weiss and handed to you?

Mr. Turkus: Objected to as repetitious.

Mr. Talley: I have got to lay a foundation for my question or the question would be ridiculous without it.

3789

The Court: Overruled.

Q. Did you so testify? A. Yes, sir.

Q. And of course that testimony given before this jury was true, wasn't it? A. Yes, sir.

Q. On your testimony before the Grand Jury were you asked this question and did you make this reply, at page 21 of the copy of the Grand Jury minutes marked People's Exhibit Z-1—I will ask you the question ahead of it so as to get the connection:

3790

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"Q. What other conversation was there? A. Mendy said we will leave it for the morning when he opens the store and we will do the job right."

Were you asked that question and did you make that reply before the Grand Jury? A. What did you say, sir?

The Court: Listen to it. Read it again.

The Witness: Yes, sir.

3791

Q. "Q. Then what happened after that? A. After that Harry Strauss told me to take the car and bring it into the private garage and he gave me Farvel's address where he lived and I should meet him there." Were you asked that question and did you make that reply? A. It is a mistake, sir; yes, sir.

Q. Another mistake? A. Yes, sir.

Q. You made a great many mistakes in your testimony before the Grand Jury, didn't you?

3792

Mr. Turkus: I object to it. That is not the proof.

The Court: Sustained.

Mr. Talley: Exception.

Mr. Turkus: He made very few mistakes.

Mr. Talley: It is his testimony. He has answered at least five questions where he testified differently before the Grand Jury than he did here by saying "It is a mistake."

Mr. Turkus: Trivialities.

The Court: That will be argued to the jury at the proper time—

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3793

Mr. Talley: Exception.

The Court: Whether these are trifling discrepancies which are reconcilable with essential truth or whether they are wilful falsifications on material points.

Mr. Talley: I take an exception.

Q. Do you remember testifying upon this trial that the defendant Weiss distributed the guns?

Mr. Turkus: I object unless he fixes the time.

3794

The Court: There were two distributions testified to.

Mr. Talley: I did not hear your Honor.

The Court: Repeat it.

(The remarks of the Court were read by the reporter).

Q. Do you remember the second distribution of guns, the second time the guns were distributed?

A. I don't understand what you mean, sir.

Q. Do you know what "second" means, first, second? A. Yes, sir.

3795

Q. Do you know what that means? A. Yes, sir.

Q. Why do you tell me you do not know what it means? A. Yes, sir.

Mr. Turkus: Objected to-- there are other words in the sentence besides first and second.

Q. How many times—

Mr. Turkus: Just a moment. I have an

3796

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objection to the argumentation with the witness.

The Court: Avoid arguing.

Q. How many times do you say you saw guns distributed—

Mr. Turkus: Object to it.

3797

Q. —on the night before or the morning of the Rosen killing?

Mr. Turkus: Objected to as repetitions.

The Court: The testimony on direct is that Weiss distributed the guns the night before but after the inspection of premises the guns were returned; that the following morning he gave Weiss the guns and the extra bullets and Weiss gave one each to Strauss and Ferraco and said "Come on."

3798

Q. You testified that on both occasions, the night before and the morning of the killing, that Weiss distributed the guns? A. Yes, sir.

Q. That was true, wasn't it? A. Yes, sir.

Q. Now were you asked these questions in your testimony before the Grand Jury and did you make these answers:

"Q. What was taken from the package"—referring I said to the package which you said contained guns—

"Q. What was taken from the package? A. Three guns taken out of the package.

"Q. When you say guns, were they revolvers? A. Revolvers.

"Q. Or automatics? A. I don't know what they were. I know they were revolvers."

Q. Were you asked those questions and did you make those replies? A. Yes, sir.

Q. Were you asked these questions and did you make these replies:

"Q. What did you do with the guns when you opened the package? A. Harry opened the package and gave Mendy a gun, Jimmy a gun, and he took one himself."

Were you asked those questions and did you make those answers? A. Yes, sir. 3800

Q. And the Harry that you referred to in your testimony was not Weiss; it was Harry Strauss, wasn't it? A. It is a mistake, sir.

Q. Another mistake?

Mr. Turkus: I ask that the observation "Another mistake" be stricken from the record.

The Court: It is for the jury to say.

Q. Were you in California in March of 1939? A. 1939? Yes, sir. 3801

Q. And you told us yesterday about the number of friends you had in California, didn't you? A. Yes, sir.

Q. And did you visit some of your friends there?

Mr. Turkus: It is objected to as incompetent, irrelevant, immaterial, nothing to do with the Rosen killing.

Mr. Talley: Preliminary foundation, I am entitled to it.

3802

Sol Bernstein—For People—Cross

Mr. Turkus: This is recross examination now.

The Court: Has it any reference to the Grand Jury minutes?

Mr. Talley: No, it has not.

The Court: Sustained.

Q. Did you visit any of your friends in California in March of 1939 who were in jail?

3803

Mr. Turkus: Objected to, incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Talley: Exception.

The Court: Sustained upon the ground that it is not new matter and you had your cross-examination of this witness.

Mr. Talley: I am asking leave now of your Honor to continue my cross-examination on a matter that I did not call this witness' attention to.

The Court: That, of course, rests in the discretion of the Court. I will let you go on for the present and see what it means.

3804

Mr. Talley: Thank you.

Q. When you were in California in March of 1939, did you visit any of your friends that you spoke about who were in jail? A. I don't know what year it was but it was, sir.

Q. What? A. Yes, sir.

The Court: You say you do not know what year?

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3805

The Witness: I do not know what year, but I visited somebody in jail.

The Court: Mr. Talley wants to know specifically 1939. Do you remember that?

The Witness: I don't know what year it was but I did visit somebody in jail. I do not know what year it was.

Q. Whom did you visit in jail?

Mr. Turkus: That is objected to.

3806

The Court: Let him answer.

A. Nati Katz.

Q. Is that name Nathan Katz? A. Yes, sir.

Q. In what jail did you visit him? A. San Quentin, San Francisco.

Q. Did you have a talk with him? A. Yes, sir.

Q. How long were you there with Nati Katz in San Quentin prison? A. An hour or so.

Q. Don't you remember that that was in March of 1939?

Mr. Turkus: That is objectionable.

3807

Mr. Talley: I have a right to fix the time.

The Court: Overruled.

A. I don't recall what month it was, sir.

Q. Can't you recall it was in the year 1939?

A. It might have been, sir.

The Court: No, not what it might have been. If you do not know, say so.

The Witness: Don't recall, sir.

3808

Sol Bernstein—For People—Cross

Q. On the first day of March, 1939, in San Quentin prison, California, did you not tell Nathan Katz, a prisoner in San Quentin jail, on a visit which you made to him there, that you had killed Rosen because Rosen owed you several hundred dollars and that you got Strauss to help you out with the job? A. No, sir.

Q. To help you out? A. No, sir.

Q. You did not tell him that? A. No, sir.

3809

Q. Did you tell him anything like that? A. No, sir.

Mr. Turkus: Objected to.

The Court: Overruled.

Q. These letters that Mr. Rosenthal has shown to you, you say are correct photostats of letters which you wrote in the Haif Moon Hotel, is that right?

3810

Mr. Turkus: Objected to as repetition.

Mr. Talley: I have not asked him anything about it. My position is precisely the same as though the defendant Weiss was the only one on trial in this case. You seem to think that word "repetitious" has a charm and every time you object on that ground the Court must sustain it. You don't understand the elementary principles of cross-examination which is based upon repetition.

Mr. Turkus: Some duet, Talley and Rosenthal—a pipperoo.

Mr. Talley: "Repetitious", that is the only objection you seem to know.

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3811

Mr. Turkus: It seems to be pretty good.

Mr. Rosenthal: Some duet and he is the whole orchestra. You blow your own horn.

The Court: Is the speechmaking over?

Mr. Talley: I had no speech.

Mr. Turkus: I had an objection.

The Court: That certainly was a speech and was unnecessary. The objection is overruled.

3812

Q. Answer the question. A. Yes, sir.

Q. And you don't deny having written those letters, do you? A. No, sir.

Mr. Turkus: Objectionable.

The Court: He has not denied it.

The Witness: Yes, sir.

The Court: But Mr. Talley is entitled to cross-examine and impeach him on that point to show that he did not write that. It adds nothing to the fund of knowledge in the court room to have more lawyers prove that he did when he admits to one that he did.

3813

Mr. Talley: Do I get an answer to the question?

Mr. Turkus: He said yes.

Q. When you write do you write fast or slowly?

Mr. Turkus: Objectionable.

The Court: Sustained as immaterial.

Mr. Talley: I submit it is proper cross-

3814

Sol Bernstein—For People—Cross

examination and should be permitted. I except to your Honor's ruling.

Q. How long did it take you to write any of these three letters?

Mr. Turkus: I object to it, incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Talley: Exception.

3815

Q. When they were written, was anybody present in the room in which you wrote them?

Mr. Turkus: That is objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Talley: I take an exception.

Q. Were any of the detectives that you say are constantly with you and have been constantly with you in the Half Moon Hotel, or whatever other hotels you have been a guest at, were any of the detectives present when you wrote those letters?

3816

Mr. Turkus: Objected to, incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Talley: Exception.

Q. Did you mail those letters personally? A. No, sir.

Q. Who did?

Mr. Turkus: Objected to, incompetent, irrelevant and immaterial.

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3817

The Court: Sustained as immaterial.

Mr. Talley: Exception. May I state that your Honor remembers that this witness denied that he ever did mail or send any letters through his wife or anybody else?

The Court: Proceed.

Mr. Talley: I take an exception to your Honor's ruling, your Honor's failure to permit me to conduct my cross-examination in a proper, legal manner—

3818

The Court: Make no speeches.

Mr. Talley: I am making no speeches. I note for the record that I except to your Honor's ruling which I regard as highly erroneous and highly prejudicial to the defendant, if you call that a speech but it is not.

The Court: When you were a judge, if any lawyer appeared before you, surely you were not more patient than I.

Mr. Talley: I never made rulings on cross-examination such as I have been compelled to here during this trial.

3819

The Court: Well, now you heard them.

Mr. Talley: I say I am entitled to cross-examine this witness at length.

The Court: Will you kindly come to order and ask your questions?

Mr. Talley: No, sir, I have no further questions to ask. I note my exception to your Honor's interference with proper cross-examination.

The Court: You interrupted the Court. You have interrupted the Court so that

3820

Sol Bernstein—For People—Redirect

I forgot what I was saying. What was I saying when I was interrupted?

(The last remark of the Court was read by the reporter.)

The Court: Ask the questions, state your exception, and let it go at that. That is the proper court decorum.

Mr. Talley: I have done that.

The Court: Any more cross from anybody, or redirect?

3821

Mr. Rosenthal: With the exception of what I stated to your Honor regarding these Grand Jury minutes which I have not had time to properly digest—

The Court: You have. You certainly cannot take Grand Jury minutes home with you.

Mr. Rosenthal: These are only a copy.

The Court: You have had plenty of time. The Court is against you on it.

Any redirect?

Mr. Turkus: Yes, very brief.

The Court: Proceed.

3822

Mr. Turkus: I am waiting for someone to be brought in.

(A man enters the court-room.)

Mr. Turkus: Bring him down here where he can be seen.

The Court: Put the other lights on.

Redirect examination by Mr. Turkus:

Q. Who is that (indicating man who entered the courtroom)? A. Muggsy Cohen.

Mr. Turkus: Before he is removed, let him give his name to the stenographer.

Sol Bernstein—For People—Redirect

3823

(Name given: Harry Cohen, of 85 Bristol Street.)

Q. Is that the Harry Cohen that you referred to in your testimony to this Court and jury as Muggsy Cohen? A. Automobile thief and a radio thief, yes, sir.

Q. You were asked by Capone's lawyer and Weiss's lawyer about your testimony upstate in the Gangi Cohen case; do you remember that? A. Yes, sir.

3824

Q. Gangi Cohen, what was his right name, first name; was it Irving? A. Irving.

Q. Was he a Brownsville boy? A. Yes, sir.

Mr. Rosenthal: Objected to as not proper redirect examination.

The Court: Overruled.

Mr. Rosenthal: Exception.

Q. When you went on the stand upstate and you were questioned by Mr. Deckelman, the District Attorney, how long were you kept on the stand?

3825

Mr. Rosenthal: That is objected to.

The Court: Overruled.

A. By Mr. Deckelman?

Q. Yes. A. About three to five minutes, sir.

Q. Do you know whether or not all your testimony in the Cohen case comprises three pages of testimony?

Mr. Cuff: Objected to, incompetent, irrelevant, immaterial.

A. It took three to five minutes.

3826

Sol Bernstein—For People—Redirect

The Court: He cannot say how many pages.

Mr. Turkus: All right.

Q. How long did Mr. Saul Price, whom you pointed out as having been seated in the second chair at the time he was there, cross-question you or cross-examine you?

Mr. Cuff: Objected to.

3827

A. I think about three or four hours.

The Court: Overruled.

Mr. Cuff: Exception.

Q. How many hours? A. About three or four hours, sir.

Q. Do you know that Saul Price, the lawyer who questioned you upstate, is Farvel Cohen's lawyer? A. Yes, sir.

Mr. Cuff: Objection.

3828

The Court: Overruled.

Mr. Cuff: Exception.

Q. At the time you were sent upstate to Mr. Deckelman's office, were there many fugitives at large?

Mr. Rosenthal: Objected to.

A. A lot of them, sir.

The Court: Overruled.

Mr. Rosenthal: Exception.

Sol Bernstein—For People—Redirect

3829

There does not seem to be any hesitancy on this witness's part when counsel for defense objects.

The Court: Please. Do you object?

Mr. Rosenthal: Yes, sir, and I ask—

The Court: The Court has overruled your objection.

Mr. Rosenthal: --I ask this witness be told when counsel for defendant objects, he has the same right as when The People's counsel objects, that he should not answer until the Court rules on the objection.

3830

The Court: The witness is so instructed.

Mr. Turkus: Do not answer a single question until the objection has been ruled on.

Q. At the time when you testified in the Cohen case, were there fugitives on that indictment?

Mr. Talley: Objected to. Not proper redirect examination.

Mr. Turkus: All right, it is withdrawn.

3831

Mr. Rosenthal: Repetitious.

Mr. Talley: Don't say that.

Q. Were there witnesses who were not then in custody, protective custody?

Mr. Rosenthal: That is objected to as a conclusion of law, not one of fact.

The Court: He said there were many fugitives at large.

Mr. Turkus: I want to know about wit-

3832

Sol Bernstein—For People—Redirect

nesses who were not taken into protective custody.

Mr. Rosenthal: I object to it. It is a legal question.

Mr. Turkus: That is not legal.

The Court: It has bearing on motive for thoroughness in testimony. He may answer.

Mr. Talley: It would not justify perjury and false swearing because a few witnesses were at large.

3833

The Court: You do not have to argue that to the Court.

Mr. Talley: That is my ground of objection.

The Court: The Court considers that offensive. The Court will ignore it.

Mr. Talley: Exception.

Q. (Pending question read by the reporter)

A. What do you mean, sir?

Q. Do you know that there were certain witnesses in the investigation that were not under the protection then of the District Attorney?

3834

Mr. Rosenthal: I object.

A. Yes, sir.

The Court: Objection is overruled.

Mr. Rosenthal: I respectfully except and move to strike out the answer.

The Court: Denied.

Mr. Rosenthal: Exception.

Mr. Cuff: Exception.

Q. Now, when Mr. Deckelman, the District Attorney, had you on the stand upstate, was your testimony in the Gangi Cohen case in so far as Gangi Cohen was concerned, limited to a single conversation that you had with Gangi Cohen?

Mr. Rosenthal: I object to the question.

The Court: Overruled.

A. Yes, sir.

Mr. Rosenthal: I respectfully except.

Q. And did you tell District Attorney Deckelman and the jury upstate the truth about that conversation that you had with Gangi Cohen?

Mr. Rosenthal: Object to the question. That is for this jury to say, whether he did or he did not.

The Court: Overruled.

Mr. Rosenthal: The other jury has passed on that.

The Court: Never mind about that, or there will be trouble in this court.

Mr. Rosenthal: I said the other jury—

The Court: It may go beyond this court.

Mr. Rosenthal: I said the other jury has passed on that.

The Court: You say nothing of the kind.

Mr. Rosenthal: I respectfully except to the Court's ruling. I am not stating anything—

The Court: You sit down. The Court requests you to sit down immediately.

Mr. Rosenthal: I except.

3838

Sol Bernstein—For People—Redirect

Mr. Talley: I wish to make an objection, sir.

The Court: Make it, Judge Talley.

Mr. Talley: I object to it upon the ground that it is not the best evidence—any reference to his testimony in the Monticello Gangi Cohen case. The best evidence of that is the stenographer's minutes. If he is to be interrogated about his testimony there, there is only one proper way to do that and that is read him the question and the answer.

3839

The Court: I think that is a good objection, and I think that if we proceed under the ruling as made it involves a retrial of the evidence in that case, and that cannot be permitted here.

Mr. Talley: I move to strike out the last answer.

The Court: Sustained upon that ground. Strike out the answer.

3840

Q. You were asked by Capone's lawyer and Weiss's lawyer about the Yuran body that was buried. Remember that? A. Yes, sir.

Q. Did you know Hyman Yuran? A. No, sir.

Q. Did you know what business he was in? A. No, sir.

Q. Did you know who ordered him killed? A. No, sir.

Mr. Rosenthal: I object to that.

Mr. Talley: Object to that, if your Honor please, wholly irrelevant, wholly immaterial, makes no difference whether

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3841

he knew him or not. He has testified that he helped to bury the body, that he helped to carry the body to the burial place. What difference does it make whether he knew him or not?

The Court: Don't argue. Overruled.

Mr. Talley: Exception.

Q. Did you know the motive for the killing of Yuran?

Mr. Rosenthal: Objected to.

Mr. Talley: Objected to as immaterial.

The Court: Overruled.

Defendants' Counsel: Exception.

3842

A. No, sir.

Q. Did you testify in any Grand Jury, either in Brooklyn, Sullivan County, or anywhere else, except in the Rosen case, The Gangi case, and the Yuran case? A. Them three cases.

Mr. Rosenthal: I object to the form of the question.

The Court: Overruled.

Mr. Rosenthal: Exception.

3843

Q. Did you testify before any Grand Jury investigating any other cases of any kind, nature or description?

Mr. Rosenthal: That is objected to.

The Court: Overruled.

Mr. Rosenthal: Exception.

A. What do you mean, sir?

Q. I will do it over with you.

3844

Sol Bernstein—For People—Redirect

The Court: He said those were the only three cases. Let it go at that.

Mr. Turkus: If that answer is there, I am contented with it. That is all.

Shall I call another witness?

Mr. Barshay: I have some motions.

The Court: Mr. Barshay is starting in.

Mr. Barshay: I just have a formal motion, sir. I don't want this man on the stand.

3845

The Court: You want to make a motion?

Mr. Barshay: Yes.

The Court: You had better make it.

Mr. Barshay: I renew my motion to strike out the testimony of this witness, both direct, cross, and redirect, on the grounds heretofore set forth, that it is incompetent, irrelevant, immaterial with respect to the defendant Buchalter, and does not tend to connect him with the commission of the crime in any shape, manner or form.

3846

The Court: It remains to be seen whether or not it will be so connected.

Mr. Barshay: Yes, but at present, sir.

The Court: That is purely a question of law. The motion is denied.

Mr. Barshay: Exception, and let the record show—

The Court: Taken subject to connection.

Mr. Barshay: Let the record show that every objection and exception and motion

made by every counsel inures to our benefit.

The Court: Precisely. That is everything?

Mr. Turkus: That is everything with this witness.

The Court: First remand the witness.

(The witness leaves the court-room.)

The Court: Gentlemen of the jury, please remember the previous admonition of the Court. Do not discuss this case. Let nobody talk to you about it. Keep your minds open and follow all other instructions as to your demeanor while under supervision as heretofore given.

3848

You may leave until ten o'clock tomorrow morning.

(The jury retired from the court-room.)

All others remain in order.

The defendants are remanded.

(Whereupon an adjournment was taken to Friday, October 31, 1941, at ten o'clock a. m.)

3849

3850

Max Rubin—For People—Direct

Brooklyn, N. Y., October 31, 1941.

TRIAL RESUMED

MAX RUBIN, (refusing to give his address), called as a witness in behalf of The People, after being duly sworn, testifies as follows:

By Clerk Clark:

3851

Q. Where do you live? A. I will not give my address. I was shot once.

Mr. Barshay: I ask your Honor now to admonish this witness that there shall be no remarks. I do not know whether the jury heard it, but I ask your Honor to tell him now not to repeat it. And if they did hear it, I ask you to admonish them to disregard it.

The Court: So admonished, and the jury is so instructed.

3852. *Direct examination by Mr. Turkus:*

Q. Mr. Rubin, how old are you? A. I will be 52 November 5th or 7th, I don't know which.

Q. Are you married? A. I am.

Q. Have you any children? A. Two.

Q. Have you been previously married? A. I have been.

Q. When you say "two children," was there a child by each marriage? A. That is right.

Q. Do you live with your wife and son? A. I do.

Q. Did you attend the public school system in New York City? A. I did.

Q. What school did you attend? A. Public School 34, Broome and Sheriff Street, New York.

Q. Is that commonly known as the East Side of Manhattan? A. That is right.

Q. How far did you go in Public School? A. Went up to 4-B.

Q. Did you leave school when you were in the fourth grade? A. I did.

Q. What did you do after you left school? A. I went to work as a messenger boy for the Postal Telegraph.

Q. You say you left school in the fourth grade? A. Yes, sir, that is right, eleven years old.

Q. For what company did you work as a messenger boy when you left school? A. The Postal Telegraph, 533 Broadway, New York.

Q. Did you do any work after you left the Postal Telegraph Company? A. Yes, sir.

Q. Do you recall what your next job was? A. I worked for a concern at 150 Nassau Street, a medical manufacturing company.

Q. What work did you do there? A. Messenger boy.

Q. What was your next job, if you recall? A. Then I worked for a concern named Isidor Cohen, or Isidor Sterr on 14th Street, who made gold caps, dental work. I worked in the laboratory.

Q. At one time had you been a messenger boy for the Western Union? A. Yes, sir, in 14th Street east of 3rd Avenue.

3856

Max Rubin--For People--Direct

Q. Was that a concern that manufactured gold caps named Stillwell & Gladding? A. No, sir, this was an analytical chemist, I worked for later, when I was about 19 or 20 years of age.

Q. I am trying the best I can to put the jobs in the order in which you had them. Did you at one time work for French & Ward? A. Yes, sir, I did, as shipping clerk; they were on Worth or Leonard Street.

3857

Q. How long did you work there? A. Quite some time.

Q. Did you ever work as a milk driver? A. I did.

Q. For whom were you employed? A. I worked for the Locust Farms and then later on for the Sheffield Farms.

Q. In your capacity were you a milk driver and salesman? A. Well, that is what a milk driver is, a salesman.

Q. Did you work for a railroad company? A. I did, I was a conductor on the 4th Avenue Line, and later on for the 5th Avenue Bus Line.

3858

Q. That would be the New York City Transit System that has railroad and transit facilities throughout New York City? A. That is right.

Q. Having left school at the age of approximately 11 years, Mr. Rubin, did you continue your education? A. I did.

Q. Was it at night schools? A. Yes, sir, preparatory schools and night schools.

Q. What schools did you attend? A. I went to the New York Preparatory School, I went to the Eron Preparatory School, Manhattan. Whenever I could possibly further my limited education I did.

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3859

Q. You say you have been married twice? A. Yes, sir, that is right.

Q. In 1917, you were then married to your first wife; is that correct? A. Yes, sir.

Q. What classification did you get in the draft?

Mr. Barshay: I object. That is a matter of cross-examination, sir. I have not objected to these preliminaries, but they continue on.

3860

The Court: This is just a pro forma background.

Mr. Barshay: It is not a formal background from this point on, these are matters for cross-examination.

The Court: As long as it is objected to I will sustain it.

Mr. Turkus: May I urge I have a right—

Mr. Barshay: Please—I do not want to have any trouble. The Judge sustained the objection.

Mr. Turkus: The District Attorney has no exception.

3861

The Court: You mean in this war?

Mr. Turkus: In 1917. I have a right, I submit, to have his true life.

The Court: This has no relation to what happened lately?

Mr. Turkus: No.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. My first classification was 4-A.

3862

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Q. Was that on the basis of being a married man with children?

Mr. Barshay: I object.

The Court: It is irrelevant.

Mr. Turkus: There is a situation in regard to the 1917 draft that the jury has a right to know.

Mr. Barshay: They will know it.

3863

Mr. Turkus: And the District Attorney has a right to submit the witness in his true light, to the jury for their consideration.

The Court: I think I sense the situation. Objection overruled.

Mr. Barshay: Exception.

Q. (Last question repeated to the witness.)

A. Yes, sir.

Q. Thereafter, was there a complaint made in connection with your classification? A. Yes, sir.

3864

Q. Was that made by your wife? A. It was.

Q. At that time had you been living separate and apart from your wife from time to time, and living with her from time to time? A. That is so.

Q. After complaint had been made, what was your new classification? A. I-A.

Q. Were you sent for or called to appear for physical examination after the I-A classification?

A. I was.

Q. Did you go? A. I did.

Q. Were you examined? A. I was.

Q. Were you called up for services? A. I was.

Q. Did you go? A. I did not.

Q. Now, sometime in the year 1918 did you join and become a member of a union known as the Amalgamated Clothing Workers of America? A. That is right.

Q. Becoming a member of that union did you join a particular or specific local thereof? A. I did.

Mr. Rosenthal: Judge, so that I in no wise may interrupt the continuity of the testimony of this witness, on behalf of the defendant Capone I object to this line of testimony on the ground it is in no wise binding on him. May I have a general objection to the entire line of testimony?

Mr. Talley: The defendant Weiss joins in the objection.

The Court: Objection overruled.

Defense Counsel: We except.

Mr. Rosenthal: May I have an objection to this entire line so I do not have to get up at each question?

The Court: The trouble is, you get up and then the Court is on its guard. There may be a special reason for some particular question.

Mr. Rosenthal: I mean, if there is any special reason I will get up on a different ground; but my ground now is a general ground in so far as it affects the defendant Capone it is not binding. But if there

3868

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is any special ground I will get up and make an additional objection so as to apprise the Court of the additional reason, if there be any.

The Court: All right.

Q. What was the specific local that you were a member of? A. Local 4, Cutters Union, Amalgamated Clothing Workers of America.

3869 Q. At that time who was president of the Amalgamated Clothing Workers of America? A. Sidney Hillman.

Q. After you joined the Amalgamated Union and became attached to Local No. 4, did you work as a cutter? A. I did.

Q. Did that membership in the Cutters Union entitle you to work as a cutter? A. It did.

Q. Had you done any work as a cutter before becoming a member? A. No.

Q. When you became a member of this union did you get a job as a cutter? A. I did.

3870 Q. You say you had no previous experience? A. None whatsoever.

Q. Who did you get your first job with? A. My first job was with a bathrobe house, the name of the concern was Pollock & Behrens, they are on 4th Avenue and 12th Street.

Q. Did you get a job there as a cutter for this bathrobe house? A. Yes, sir, I did.

Q. Was that a job of the cutting of bathrobes? A. That is right.

Q. From that time on did you work for a considerable period of time as a cutter for various concerns? A. I did.

Q. By what houses were you employed and

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3871

what was their line of merchandise? A. I worked for the F.B.Q., they are on Lafayette Street. They were making uniforms.

Q. Army uniforms? A. Yes, sir. I worked for Kahn & Dreyfus; they were making Army uniforms; and several other houses I do not remember; and then I worked for some clothing houses that made ordinary clothing, like Sherrick & Hirsch, Samuel Falk, maybe some others.

Q. From 1918 how long did you work as a cutter, as you have just related to the Court and the jury? A. Until about 1926 or 1927.

3872

Q. Was there a period of time when you did not work as a cutter? A. That is right.

Q. What was that period of time? A. Between 1921 and 1923.

Q. Did you then leave the United States? A. I did.

Q. What country did you go to? A. Germany.

Q. In order to leave the United States to go to a foreign country it was necessary, wasn't it, to get a passport? A. It was.

Q. In 1917, as you have told the jury, you had evaded service in the draft, is that correct?

3873

A. That is right.

Q. Did you get a passport to leave the United States? A. I did.

Q. Did you get it in the name of Max Rubin? A. I did not.

Q. What name did you get your passport in? A. Instead of using the name Max, I used the name Benjamin.

Q. Was the name Benjamin the name of some member of your family? A. A brother of mine.

Q. When you returned from Europe, did you

3874

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rejoin your association and connection with the Amalgamated Clothing Workers of America? A. Yes, sir.

Q. Did you go back to Local No. 4 of the Cutters Union? A. Yes, sir.

Q. As I understand it, then, you maintained that connection until 1926 or 1927? A. That is right.

Q. Do you know a man named Murray Weinstein? A. I do.

3875

Q. Do you know him well? A. Yes, sir.

Q. Was he connected with the Amalgamated Clothing Workers of America Union? A. Yes.

Q. In what capacity? A. He was business agent, later on became the manager of that particular local, Local 4.

Q. At the time when you rejoined your connection with the Amalgamated Clothing Workers of America in Local 4, Cutters Union, what position then did this Murray Weinstein hold? A. To my best recollection he was a business agent.

3876

Q. Shortly after you rejoined the union of the Amalgamated Clothing Cutters Union, Local 4, were you elected to any office in that union? A. I was an executive board member, and became an executive board member when I rejoined.

Q. Had you been an executive board member before you went to Europe? A. I was.

Q. On your return from Europe were you on the executive board again? A. A short time after I came back, yes, sir.

Q. Is that an elective office, in the executive board? A. It is.

Q. In addition to being a member of the executive board did you occupy any other official

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position with the union? A. I was on committees. I was on the finance committee of the organization.

Q. Until approximately what time—what year—did you continue in these official capacities with the union? A. Until 1927.

Q. Did you, while you were a union official connected with the Amalgamated Clothing Workers of America, make the acquaintance of a man named Terry Burns?

3878

Mr. Barshay: I object to that as wholly irrelevant.

The Court: Objection overruled.

Mr. Barshay: Exception.

May we fix the date, please?

Mr. Turkus: I will.

A. I did.

Q. Approximately when did you meet Burns?

A. About 1923.

Q. Did you also make the acquaintance of an individual while you were an official of the Amalgamated Clothing Workers of America by the name of Abie Slabow?

3879

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

Q. Were those individuals, Abie Slabow and Terry Burns, connected with the Amalgamated Clothing Workers of America?

3880

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Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. They were on the payroll.

Mr. Barshay: I move to strike out the answer. The answer requires "yes" or "no."

The Court: Not necessarily. Motion denied.

Mr. Barshay: Exception.

Q. At the time Burns and Slabow were on the payroll of the union, what position did Murray Weinstein occupy with the Amalgamated Clothing Workers of America?

Mr. Barshay: I object to that. It has nothing to do with this defendant.

The Court: Objection overruled.

Mr. Barshay: Exception.

3382

A. He was active in the organizing work of the organization.

Q. Did the payroll, in connection with Slabow and Burns, continue with the Amalgamated at the time after Weinstein became manager of the union?

Mr. Barshay: I make the same objection, not binding on this defendant, in no wise connected with this case.

The Court: Objection overruled.

Mr. Barshay: Exception.

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3883

A. Yes, sir, until—the payroll continued while Weinstein was manager of the union, yes, sir.

Q. In your connection as a union official, did you become acquainted with a man known as Philip Orlofsky?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

3884

Q. Was he connected with the Amalgamated Clothing Workers of America? A. He was.

Q. Now, in or about 1926, did Philip Orlofsky secure some official position with the Amalgamated Union?

Mr. Barshay: I make the same objection; I don't know, Judge, whether we are trying the Amalgamated Union or trying this case.

The Court: Objection overruled.

Mr. Barshay: Exception.

3885

The Court: You and I will find it out at the same moment, so we must see what it is all about.

Mr. Barshay: This man has been on the stand forty minutes and he has not mentioned a single thing yet. It is absolutely immaterial to this issue. I know the purpose of this examination.

The Court: I see. If it is not material, then why object?

Mr. Barshay: It is not material.

3886

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Mr. Turkus: May the record indicate that the witness went on the stand at approximately ten minutes to eleven and it is now ten minutes after eleven?

Mr. Barshay: All right, twenty minutes.

Q. (Last question repeated to witness.) A. He was business agent; then he became manager of the union by defeating Murray Weinstein in the election.

3887

Mr. Barshay: I move to strike out the answer.

The Court: Motion denied.

Mr. Barshay: Exception.

Q. After Philip Orlofsky replaced Murray Weinstein as manager of the Cutters Union, Local 4, of the Amalgamated, did Burns and Slabow continue on the payroll of the union?

3888

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. They did.

Q. Now, how long after Orlofsky became manager of the union did Slabow and Burns remain on the payroll?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Until 1927, I believe.

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3889

Q. Now, Mr. Rubin, as an official of the union did you come to know a man named Hymie Holtz?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I knew him as Hymie "Curly" Holtz, very well.

3890

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Was "Curly" an alias?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

Q. Do you know whether Hymie "Curly" Holtz is alive today?

3891

Mr. Barshay: I object.

The Court: This calls for yes or no. Objection overruled.

Mr. Barshay: Exception.

A. I don't know.

Q. Do you know a man named Shapiro?

Mr. Barshay: I make the same objection.

3892

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The Witness: What Shapiro?

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Well, the one who is sometimes known as Jacob Shapiro. Did you know such an individual? Did you come to meet him, as an official of the union?

3893

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I do, but they never called him "Jacob Shapiro."

Q. Under what name did you know Shapiro?

A. Charley Gurrah.

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

3894

Q. (The Court) How do you spell that? A. G-u-r-r-a-h.

Q. As a union official working with the Amalgamated, did you come to know the defendant Louis Buchalter? A. I did.

Q. Under what name other than Buchalter did you know him? A. Lepke, and there is another name we used when we called him on the telephone.

Q. I will come to that later. What was the name under which he was commonly referred to?

A. Lepke.

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3895

Q. Now, did the Defendant Lepke, Gurrah, and Curly Holtz become connected with the union?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. They did.

Q. Whose places in the union did Lepke, Gurrah, and Hymie Curly Holtz take?

3896

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Slabow and Terry Burns.

Q. In other words, Lepke, Gurrah and Hymie Holtz replaced Slabow and Burns? A. That is right.

Q. And that was after Orlofsky was business manager of the union? A. That is right.

3897

Mr. Barshay: May we have the time?

Mr. Turkus: You will have it, be patient.

Q. Through whom, Mr. Rubin, did you make the acquaintance of Lepke and Gurrah? A. Through Curly.

Q. Who was it that introduced you to Curly first, do you recall?

Mr. Barshay: Objected to.

The Court: Objection overruled.

3898

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Mr. Barshay: Exception.

A. Irving Whitey Deutsch.

Q. Was Irving Whitey Deutsch a member of the union? A. He was, at that time.

Q. Was he a cutter? A. He was.

Q. Was it through your association with Deutsch that you ultimately made the acquaintance of Hymie Curly Holtz, Lepke, and Gurrah? A. Yes, sir, that is right.

3899

Q. How long have you known Lepke and Gurrah? A. Since 1927, I believe.

Q. Had you seen Lepke before you actually made his acquaintance? A. I did.

Q. Where had you seen him? A. In the Clothing Center, particularly downtown, on Broadway.

Q. Is that commonly known as the Clothing District? A. At that time it was below 14th Street. Now it is above 14th Street, on 5th Avenue.

3900

Q. So at the time you first saw him, you saw him in the area that was then commonly known as the Clothing District? A. That is right.

Q. When did you first become intimate with Lepke?

Mr. Barshay: I object to that characterization.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. 1932.

Q. Now, prior to 1932, did you come in frequent contact with Lepke? A. Intimately? You are speaking of intimately? Not how often I

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3901

saw him before 1932—you are speaking of intimately?

Q. Yes. A. By intimately you mean after Curly Holtz disappeared?

Mr. Barshay: I move to strike it out. He can answer yes or no.

Mr. Turkus: I move to withdraw it in that form.

Mr. Barshay: Will your Honor instruct the jury to disregard that statement?

3902

The Court: It does not mean anything as far as I can see.

Mr. Barshay: Whatever it means, may they disregard it?

The Court: Somebody disappeared—suppose he did?

Mr. Barshay: Do you strike it out?

The Court: It does not mean anything.

Mr. Barshay: I take exception.

The Court: Strike it out.

Mr. Barshay: I withdraw the exception.

3903

Q. Did Hymie Curly Holtz have a place of business in the clothing district?

Mr. Barshay: Objected to as immaterial.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. He had a place of business on 24th Street.

Q. Did he have a partner in that business? A. He did.

3904

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Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Who was the partner? A. His name was Dun.

Q. Did you have occasion to go to that place of business from time to time?

3905

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I went there from time to time.

Q. Who did you see there?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

3906

A. Curley, Lepke, Gurrah, and a few others.

Q. In the years you have known Lepke, did you ever make contacts with him and with Gurrah?

Mr. Barshay: I object to the form of the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

Mr. Rosenthal: At this time I object. I have a special objection. I object to it as in no wise connecting or binding on

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3907

the defendant Capone; no knowledge on his part of any of these things.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

A. I did.

Q. Now, as an official of the union did you have any business deals with Lepke? A. I did, and with Gurrah whenever Lepke was not around.

Q. Without stating the nature of the work you did, will you tell the Court and the jury whether you did any work for Lepke in connection with Local 138 of the Flour Truckmens Union?

3908

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

Q. Likewise, without stating the nature of the work you performed, tell the Court and jury whether or not you did any work for Lepke in connection with the Expressmens Association.

3909

Mr. Barshay: Same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

Q. What was the full name of the Expressmens Association? A. The Greater New York Tailors Expressmens Association.

Q. Was that the association of boss truckers?

A. Of boss truckers in the clothing industry.

Q. Exclusively? A. Exclusively.

3910

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Q. As a result of the work you did for Lepke for the Flour Truckmen's Union and the Greater New York Tailors Expressmen's Association, did you come in frequent contact and have many meetings with Lepke? A. Almost daily; when he was around, almost daily.

Mr. Barshay: He answered the question.

The Witness: I have got to be careful.

3911

Mr. Barshay: You had better be careful.

The Witness: I want to be exact as I can be. Don't you bulldoze me. I know Hymie Barshay very well. Don't bulldoze me.

Mr. Barshay: I never saw this man in my life. He had an experience in a case before and he is resuming the same tactics, and I read him the record and he was admonished by the judge. Now I ask your Honor to admonish him to answer questions. He is an intelligent individual.

3912

The Court: You are speaking in a very angry tone. You presume to jump up and in that tone to aggravate this witness by addressing him and admonishing him, when you have no business to do it. You brought this on yourself.

Mr. Barshay: I take exception.

The Court: You are both to blame.

Mr. Barshay: You should tell him now he cannot stand up in this court-room and speak that way to any person who makes a legal and proper and competent objection.

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The Court: You are in a highly excited state.

Mr. Barshay: I am not excited.

The Court: You are. You are shouting in a high voice and in an excited manner.

Resume the examination, please.

By Mr. Turkus:

Q. Sometime in the year 1928 were you appointed by the executive board to become a business agent of Local 240 of the Clothing Drivers and Helpers Union? A. I was.

3914

Q. At that time was Local 240 of the Clothing Drivers and Helpers Union affiliated with the Amalgamated Clothing Workers of America? A. It was.

Q. Sometime in or about the year 1933 did they, Local 240 of the Clothing Drivers and Helpers Union, become affiliated as part of the Teamsters Union? A. It did. It became part of the Teamsters Union of the A. F. of L.

Q. In 1928 it was then part of the Amalgamated, is that correct? A. That is right.

3915

Q. Until what year did you continue on the payroll, as business agent of Local 240? A. Until February, 1939.

Q. Did you do any work, however, as business agent for the local from about the middle of October, 1936, until August of 1937? A. I did not—very little.

Q. Now, after that period which you have just related to the Court and Jury, and from on or about August, 1937, until—I withdraw the question

3916

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Q. After that period when you say you did very little work, did you become intensely active as business agent?

Mr. Climenko: That is objected to.

The Court: Objection overruled.

Mr. Climenko: —Exception.

A. From August, 1937, yes, sir.

3917

Q. Now, going back to the time when Orlofsky replaced Weinstein as business manager of the Amalgamated Clothing Workers of America, Local No. 4, did there come a time when there was some internal dispute in the union?

Mr. Barshay: Objected to as incompetent, immaterial, and irrelevant, not binding on the defendants.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

3918

Q. Between whom was the dispute?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Between the Hillman group and the Orlofsky group.

Q. (The Court) When? A. 1931.

Mr. Barshay: I move to strike out the answer. I cannot understand what this has to do with this case.

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3919

The Court: Objection overruled.
Mr. Barshay: Exception.

Q. Who was with Philip Orlofsky's faction or side?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.
Mr. Barshay: Exception.

3920

A. In the union, that is directly connected with the Orlofsky faction, inside the union there was Abe Beckerman.

Q. What position did he occupy? A. He was manager of the Joint Board of the Amalgamated Clothing Workers of America; there was Dave Wolff, who was ex-manager of the union, and then there were several business agents with Orlofsky in the Cutters Union, that were inside the union.

Q. Who were with Orlofsky outside of the union but on the payroll?

3921

Mr. Barshay: Objected to as incompetent, immaterial and irrelevant, not binding upon the defendant. Too remote. Nothing to do with this case. The purpose of Mr. Turkus's question is too obvious—I don't like to say it, but I will be forced to say it if he doesn't desist.

The Court: Objection overruled.
Mr. Barshay: Exception.

Q. Is the question clear to you? A. Yes, sir.

3922

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Hymie Curly Holtz, up to 1932, then Lepke and Guirah, after that.

Mr. Barshay: I move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied.

Mr. Barshay: Exception.

Q. Now, this dispute in the union, what was that over?

3923

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. A question of power.

Q. Was that the real dispute?

Mr. Barshay: I object to the characterization.

The Court: Objection overruled.

3924

Mr. Barshay: Exception.

A. That was the real dispute.

Q. Would you say power and supremacy?

A. That is right.

Mr. Barshay: I object to that.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Do you know a man named Bruno Belea?

A. I do.

Q. What position did he occupy in the Amal-

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3925

Amalgamated Clothing Workers of America? A. He was a general organizer for the Amalgamated Clothing Workers directly, the general office.

Q. Did Bruno Belea take a side in the internal dispute?

Mr. Barshay: I object to that on all the grounds already stated?

The Court: Overruled.

Mr. Barshay: Exception.

3926

A. H did.

Q. Which side was he on?

Mr. Barshay: Same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. He was on the Hillman side.

Mr. Barshay: I move to strike out the answer.

The Court: Motion denied.

Mr. Barshay: Exception.

3927

Q. Now, during the course of this internal dispute of control between the Orlofsky faction on the one side and the Hillman faction on the other, did you have a meeting with Lepke?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

3928

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Q. In that meeting did Lepke and you have a talk? A. We did.

Q. At that time had you been seeing Lepke frequently in regard to other business deals you had with him, the character of which you will not disclose?

Mr. Barshay: Objected to.

A. I want to know the time.

3929

Mr. Turkus: Question withdrawn.

Q. Do you know a man named Luciano?

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I know him as "Lucky"—Charley Luciano.

Mr. Barshay: I move for the withdrawal of a juror and the declaration of a mistrial.

3930

The Court: Motion denied.

Mr. Barshay: Exception.

Q. Through whom did you meet Charley "Lucky" Luciano?

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Through Lepke.

Q. Now, during the course of this dispute between Orlofsky and the Hillman factions, did

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Lepke have any talk with you in which the name of Luciano was mentioned?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

Q What did Lepke tell you?

Mr. Barshay: I object.

3932

The Court: Fix the time.

Q. When was that? A. The early part of 1932.

Mr. Barshay: Objected to as too remote, incompetent, immaterial, and irrelevant.

The Court: Objection overruled.

Mr. Barshay: Exception.

Mr. Rosenthal: On behalf of the defendant Capone I object on the ground it is no wise binding on that defendant.

3933

The Court: Objection overruled.

Mr. Rosenthal: Exception.

Mr. Rosenthal: It is in no wise connected with this case.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

Mr. Cuff: Same objection on behalf of the defendant Weiss.

The Court: Objection overruled.

Mr. Cuff: Exception.

3934

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Q. Now, the question is, What did Lepke tell you in that talk?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. He told me that Orlofsky would have to give up his fight—would have to give up his union.

3935

Q. Was the name of Luciano mentioned?

Mr. Barshay: Are you satisfied he finished with the answer—the answer is not complete.

Q. Please answer before the next question.

A. He said to me that Orlofsky has to give up the fight; that he has to give up his union; that he had just met with Lucky and Belea, and that the deal was made for Orlofsky to give up the union, and I should get hold of Orlofsky for him.

3936

Mr. Barshay: I move to strike out the answer.

Q. (The Court) How do you spell Belea? A. B-e-l-e-a, the first name is Bruno.

The Court: Motion denied.

Mr. Barshay: I move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Denied.

Mr. Barshay: Exception.

Q. What is that—he met who? A. He had just met Bruno Belea and Lucky, and I should get hold of Orlofsky for him. That Orlofsky would have to give up the union, his union.

Q. What union was that? A. That was the union that Orlofsky started in opposition to the Amalgamated.

Mr. Barshay: I move to strike out the answer.

The Court: Motion denied.

3938

Mr. Barshay: Exception.

Q. Who was "Lucky" that was mentioned in the conversation?

Mr. Barshay: I object. He has been identified.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. His name is Charley Luciano—"Lucky".

Q. When Lepke told you about that deal which he had just made with Luciano and Belea, what did you say to him?

3939

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I said to him, "What about me?" He said, that I am going to remain on but the other officials, Emanuel Strauss, and Abe Beckerman, and Irving Alexander, and maybe one or two others I don't remember, were going to get a year's pay after the union broke.

3940

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Q. What was their connection? A. They were business agents, and they continued as business agents in Orlofsky's union. They would have to give that up, but they would get a year's pay from the Amalgamated, and I was to continue as I was before, as business agent of Local 240.

Q. These other officials got a year's pay and were on the street?

3941

Mr. Barshay: Objected to as a conclusion.

The Court: Sustained.

Q. When you said to Lepke, "What about me?" what official position in the union did you hold? A. I was the business agent of Local 240, the Clothing Drivers and Helpers Union, at that time connected with the Amalgamated Clothing Workers of America.

3942

Q. After Lepke told you your job would be safe, in the language you told the jury, did he tell you to do anything? A. To get Orlofsky for him.

Mr. Barshay: May we have the date?

Q. Tell the jury to the best of your recollection what Lepke said to you in regard to arranging for a meeting with Orlofsky.

Mr. Barshay: Objected to as already answered.

The Court: See if you can be more precise.

The Witness: He told me to get a hotel room where we could meet.

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3943

Q. Did you get a hotel room for the meeting?

A. I did.

Q. What was the name of the hotel? A. The Governor Clinton.

Q. Did you arrange for a meeting between Lepke and Orlofsky?

Mr. Barshay: Same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

3944

A. I did.

Q. Did you attend the meeting? A. I did.

Mr. Barshay: I tried to get a date set.

Mr. Klein: It was 1932.

The Court: It was early in 1932.

Q. Did you, Lepke, and Orlofsky meet in a room in the Governor Clinton Hotel? A. We did.

Q. Did Lepke talk to Orlofsky? A. He did.

Q. At that time Lepke was on the payroll of the Orlofsky faction, wasn't he?

3945

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. He was.

Mr. Barshay: I move again for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied.

Mr. Barshay: Exception.

3946

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Q. Will you be kind enough to tell the Court and jury what Lepke said to Orlofsky?

Mr. Turkus: I will withdraw it in that form.

Q. Was there a talk between Lepke, Orlofsky, and yourself? A. There was.

Q. Did Lepke say something to Orlofsky? A. He did.

3947

Q. What did he say to him?

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. He said he would have to break up his union; that he had just left Charley "Lucky" and Belea, and that Orlofsky would have to break up his organization.

Q. After this meeting did Orlofsky give up the union? A. He did.

3948

Q. Did he quit the factional fight? A. He did.

Q. Now, after Orlofsky quit that fight did Lepke and Gurrah continue on the payroll of the Amalgamated Clothing Workers of America?

Mr. Barshay: I object.

The Court: Objection overruled. Say yes or no.

A. Yes, sir.

The Court: The witness makes a request, and I was advised before he came

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3949

on the stand to be on the alert—for physical reasons he wants to take a recess. For how long?

The Witness: Just five minutes.

The Court: Then we will make it ten minutes, so the jury will have a chance to go in and out from the room.

The witness may leave.

The jury may recess for a few minutes. Do not discuss the case.

The defendants are remanded.

3950

(Whereupon a recess of fifteen minutes was taken.)

(AFTER RECESS--TRIAL RESUMED)

(12:00 noon)

MAX RUBIN, a witness in behalf of The People, resumed the stand and testified further as follows:

3951

Direct examination by Mr. Turkus (Continued):

Q. Did you continue meeting with Lepke and Bruno Belea from time to time? A. I did.

Q. In any of those meetings was there a conversation in which there was a discussion as to who was to be the intermediary between Lepke and the union?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

3952

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A. There was.

Q. Who was present at that meeting? A. Belea, Lepke, and myself.

Q. Relate the conversation to the Court and the jury.

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

May we fix the time?

3953

The Court: Yes, time and place.

The Witness: It was in 1932—the early part of 1932—I am trying very hard to place the month for you if I can.

The Court: What was the place of meeting?

The Witness: The place, I believe, was Belea's—he had a furnished room on 11th Street—I believe it was in Belea's room.

By Mr. Turkus:

3954

Q. Relate the conversation to the Court and the jury.

Mr. Barshay: Note my objection and exception.

Mr. Talley: I object on behalf of the defendant Weiss, if your Honor please, to all this line of testimony.

The Court: Objection overruled.

Mr. Talley: Exception.

A. Belea said the union wants Danny Fields and Paul Berger to be the intermediary between the union and Lepke.

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3955

Mr. Barshay: I move to strike out the answer.

Q. (The Court) Danny Fields? A. Yes, sir, and Paul Berger.

The Court: Motion denied.

Mr. Barshay: Exception.

Q. At that time who was the intermediary?

Mr. Barshay: I object.

3956

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Whitey Deutsch.

Q. Answer this question yes or no only: Is Danny Fields alive?

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception. I move for the withdrawal of a juror and the declaration of a mistrial.

3957

The Court: Motion denied.

Mr. Barshay: Exception.

A. He is not.

Q. Did Danny Fields and Paul Berger become the intermediaries after that conversation, between Lepke and the union?

Mr. Barshay: Objected to as incompetent, immaterial and irrelevant, too remote, calls for a conclusion, tends to prejudice the jury.

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The Court: So far the Court does not understand it, so I assume the jury does not. It is all subject to connection.

Mr. Barshay: Exception.

The Court: And not prejudicial.

A. They did.

Q. Was it after that arrangement was made that Murray Weinstein became reinstated as manager of Local 4 of the Clothing Cutters Union?

3959

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I was.

Q. Do you know Sam Katz? A. I do.

Q. Did you meet him through being a union official? A. I did.

Q. At the time I am talking about, namely, when Weinstein was reinstated as manager of Local 4 of the Cutters Union of the Amalgamated, was Katz connected with the union? A. He was business agent of Local 4.

3960

Q. Now, after that meeting out of which Fields and Berger became the intermediary between the union and Lepke, did you continue meeting Lepke, Belen, Sam Katz, and Murray Weinstein? A. On different occasions, yes, sir.

Q. On some of the occasions did you attend a meeting as between Lepke and Murray Weinstein? A. Yes, sir.

Q. When did you get together, with Lepke and Murray Weinstein? A. At the Governor Clinton

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3961

Hotel. Murray Weinstein had arranged for a room.

Q. After the arrangement had been made for a go-between, Danny Fields and Berger, did there come a time when Lepke had a talk with you in regard to stoppage?

Mr. Barshay: I object. The question is ambiguous to me. In respect to what?

Q. (The Court) What was the word? A. Stoppage.

3962

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. (Previous question read to witness.) A. Yes, sir.

Q. Tell the Court and the jury what is meant by "stoppage". A. It is preliminary to calling a strike. When the union official or union officials are not sure of a success in calling people out and having the strike run properly, they call it "stoppage," so that if it falls down and does not materialize, or there is a double-cross in any way, nothing is said about it. But if it takes on force and volume, and people respond, then you call it a strike.

3963

Q. Will you tell this Court and jury what Lepke told you about a stoppage?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

3964

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A. He said he had first met Sam Katz and the union wants a stoppage of all the trucks, clothing trucks, that branch stores were taking all the work out of town and that the trucks would have to be stopped, and he said, "If this thing continues, all the workers out of town, there will be nothing left for the New York market." Then he said, "Whenever manufacturers go out of town there is no chance to make a dime."

3965

Mr. Barshay: I move to strike out the answer.

The Court: Motion denied.

Mr. Barshay: Exception.

Q. Now, at that time what official position did you have with the union? A. I was business agent of Local 240, the Clothing Drivers and Helpers Union at that time connected with the Amalgamated Clothing Workers of America.

Q. Were the union members fellows who drove clothing trucks? A. That is right.

3966

Q. Was a stoppage to be called in the clothing trucking industry? A. That is right.

Q. Was anything mentioned where the New York business was going? A. Pennsylvania.

Q. Now, when Lepke told you about this stoppage to be called in the clothing trucking industry, did he tell you a specific date or dates where the stoppage would be called? A. He did.

Q. Can you recall that date? A. The summer of 1932, I believe.

Q. After Lepke told you about the stoppage to be called on a specific date, did he give you

any instructions? A. Yes, sir, he told me to go out and stop all the trucks.

Q. By stopping all the trucks, what does that mean? A. All the trucks that cart clothing in and out of New York were to be stopped on a specific day.

Q. Does that mean that no trucks roll on the streets? A. No trucks.

Q. When you got your instructions to see that no trucks rolled, did you say anything to Lepke? A. I told him I believed I could stop all the trucks except three companies that I had my doubts about.

3968

Q. Did you tell Lepke the three companies you had your doubts about? A. Yes, sir.

Q. Tell us what you said to him? A. I told him I did not think I would be able to stop Louis Cooper, or the Garfield Express Company. I am almost sure the Branch Storage would not stop, and since the New York and New Jersey handled both union and non-union work, I thought there would be trouble stopping them to.

3969

Q. Were they an important factor in the clothing trucking industry? A. They were taking most of the work out of town, yes, sir.

Q. When you said "Louis Cooper," did you say "Louis Cooper, the Garfield Express"? A. I did.

Q. Where was the Garfield Express operating from? A. Oak Street, Passaic, New Jersey.

Q. Was Louis Cooper of the Garfield Express operating as a union or a non-union? A. Non-union.

Q. You have also related to the Court and

3970

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jury that you mentioned New York and New Jersey. A. That is right.

Q. By that do you mean the New York and New Jersey Transportation Company? A. That is right.

Q. Engaged in the business of clothing trucking? A. That is right.

Q. Now, where was the New York & New Jersey transacting its business, in what state?

3971

A. It has done business in New York; had business in Passaic, in competition with Louis Cooper, and they had a little business in Pennsylvania, I think in Wilkes Barre, in that section.

Q. In the New Jersey end of their clothing industry, you say they were in competition with Louis Cooper of the Garfield Express? A. Yes, sir.

Q. Did Lepke say anything to you about the Pennsylvania business of the New York & New Jersey Transportation Company? A. He said all the business was to stop and the Pennsylvania business was to be done away with.

3972

Q. Who was operating as the New York and New Jersey Transportation Company at the time when you were informed of the stoppage and given instructions? A. Nathan Salzman, Morris Bluestein, and Joe Rosen.

Q. By Joe Rosen, do you mean Joseph Rosen, now deceased? A. That is right.

Q. After you told Lepke you might have trouble with those three firms that you have related to the jury, did Lepke say something to you? A. He told me to go out and see what I could

do, if I had any trouble to come back and see him.

Q. Were you instructed to report to Lepke?

A. Just what I told you. He told me to go and see him if I had any trouble.

Q. Did you, pursuant to Lepke's instructions, go out in an endeavor to have a stoppage of all trucks in the clothing trucking industry? A. I did.

Q. Did you go to Branch Storage? A. I did.

Q. In pursuance of your instructions from Lepke? A. Yes, sir. 3974

Q. Who did you meet, connected with the Branch Storage? A. Meyer Butinsky, his first name is Meyer.

Q. What was Meyer Butinsky in the Branch Storage? A. He was one of the owners.

Q. Did Butinsky agree to stop his truck on a designated day?

Mr. Barshay: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Barshay: Exception. 3975

A. He did not.

Q. Did you go to the people operating the New York & New Jersey Transportation Company? A. I did.

Q. Did you talk to them more than once? A. I spoke to them several times.

Mr. Barshay: Let us identify who he spoke to, please.

Mr. Turkus: May I continue with my examination?

3976

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The Court: Yes.

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception. It is important to know with whom this gentleman spoke.

The Court: Proceed.

Q. After you had this interview you have related to the jury, did you go back to see Lepke?

3977

A. I did.

Q. Did you make a report to Lepke? A. I told him what I had done. I don't like the word "report". I just told him what I had done.

Q. In your conversation with Lepke, was the name of Joseph Rosen mentioned?

Mr. Barshay: I object to Mr. Turkus leading.

The Court: This is simply directing attention to a specific point.

3978

Mr. Barshay: The man said nothing to have his attention directed to anything. He can ask for the conversation. That can be had from the witness and not from Mr. Turkus.

The Court: See if you can reframe your question so as to direct attention to the conversation without mentioning the name.

Q. Relate what you told us you said to Lepke.

A. Regarding the New York & New Jersey?

Q. Yes.

The Court: Try to fix the approximate year.

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3979

The Witness: 1932—Summer of 1932. I told him I had been to the New York and New Jersey and that they objected to stop because they thought it was a trick in it—a trick on the part of Louis Cooper—and they did not want to stop. And when I told Joe Rosen he would have to give up the Pennsylvania business, Joe Rosen said that was the only thing he had in business; he did not have any money investment there but he had brought in that business and that is all he had there. Sobler objected also.

3980

Q. After you told that to Lepke did he say anything to you as to what you were to do?
A. I told him I thought I could straighten out the account of the concern if I could get him a little more business, and then maybe I would be able to straighten it out.

Q. What concern was that? A. The one I had in mind was the Fyirsky Clothing Company.

Q. I am talking about what concern you had in mind getting more business to effectuate the stoppage. A. The New York and New Jersey.

3981

Q. Did you see and talk to Rosen after that?
A. I spoke to the two, Rosen, Blumstein and Sobler.

Q. After talking with them did you have any talk with Lepke? A. I did.

Q. What did you say to Lepke about that interview? A. I told him that the three of them are objecting, Rosen persisted because of the Pennsylvania situation, and the others also objected because they were afraid that Louis

3982

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Cooper was going to take away all their business, and there was kind of a move to hurt them.

— Q. Was the name of Rosen mentioned? A. Just as I told you.

Q. Did Lepke say anything about Rosen?

3983

Mr. Barshay: Mr. Turkus, please, may we have this man give his testimony on matters which are new for the first time becoming material, in some respects at least, to this issue, without you making suggestions to the witness.

Mr. Turkus: Your Honor must have in mind that there had been a lot of transactions—

The Court: Please don't argue. Objection is overruled.

Mr. Barshay: Exception.

(Last question repeated.)

A. He told me he wanted me to see him.

3984

Q. At about that time, in the year 1932, were there various places where you met with Lepke?

A. There were.

Q. Various places in the clothing district? A. The clothing district, and up in the cloak section.

Q. Now, when Lepke told you he wanted to see Rosen, did he specify any particular place that you can recall? A. To my best recollection, I believe it was Sam Weiner, on 20th Street.

Q. In what business was Sam Weiner? A. Canvas.

Q. Do you remember the trade name? A. I do not.

Q. Where was it located? A. On 20th Street.

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3985

Q. Off what other street? A. Fifth Avenue.

Q. After Lepke told you to arrange for an appointment, did you go to see Rosen? A. I did.

Q. Did you tell him that Lepke wanted to see him? A. I did.

Q. Were you present when Rosen and Lepke met? A. I was.

Q. Where did they meet? A. In that concern, Weiner's concern.

Q. Now, who was present there at the time of the meeting, tell us all the people who were in the room? A. Lepke, Gurrah, Danny Fields, and I.

3986

Mr. Barshay: I object to that as irrelevant and immaterial, and too remote.

The Court: Objection overruled.

Q. Now, do I understand correctly that there were present Lepke, Gurrah, Danny Fields, Rosen and yourself at the meeting? A. Yes, sir.

Q. At that time was Gurrah associated with Lepke in business?

3987

Mr. Barshay: Objected to as immaterial here.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

Q. Was Danny Fields the individual whom you told us was intermediary? A. Yes, sir.

Q. Was Gurrah then Lepke's partner?

Mr. Barshay: Objected to as a conclusion.

3988

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The Court: How does he know?

Mr. Turkus: Question withdrawn.

3989

Q. What did Rosen say at the meeting? A. He walked in and he said that I, Rubin, "told me that I would have to close down the Pennsylvania business, and we have to close down the whole business in New York. The Pennsylvania business was the only thing I have in the concern and if I lose that I lose everything in the concern."

Q. Did Lepke say anything to Rosen when he said that? A. "You are kidding, you have plenty of business, you are kidding."

Q. Plenty of business in addition to what? A. To the Pennsylvania business.

Q. Did Lepke say anything else when there was a discussion about business? A. He wanted to see his books.

Q. When Lepke said that to Rosen, what did Rosen do? A. Rosen said, "I will show you," and he went to the 'phone and called up his office and spoke.

3990

Q. He spoke on the telephone? A. Yes, sir.

Q. Do you know a young lady named Sylvia Rosen? A. I do.

Q. What was her relationship to Joseph Rosen? A. His daughter.

Q. After the telephone conversation who came to the meeting? A. Sylvia Rosen.

Q. Did she have something in her possession? A. She did.

Q. What was it? A. A book.

Q. How many, do you know? A. I don't; I know there was one large one.

Q. When she came in with the books—

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3991

Mr. Barshay: I object.

Mr. Turkus: Question withdrawn.

Q. Was there one or more than one, if you can recall? A. I cannot.

Q. When she came in with the large book, do you recall what happened? A. She gave it to her father.

Q. What did the father do with the book? A. He brought the book over to the desk.

Q. Who was at the desk? A. Charley Gurrah and Lepke.

3492

Q. All right, tell the court and jury what happened then in connection with the large book that you recall. A. Charley Gurrah opened the book. He went with his hand like this (indicating), "You cannot go to this house, you cannot go to this house."

Q. Where was Lepke at the time Gurrah did that slicking motion, hitting the book, as you indicated? A. Close by him.

Q. When Gurrah told that to Rosen, what did Rosen say? A. He is being ruined. That is the only business he has there, and that if he lost that he would lose everything; he would be absolutely—he is a married man—and all that.

3993

Q. Did you participate in that discussion? A. Very little. All I did was, I told Joe Rosen not to hit his head up against a stone wall; if they told him to do something, he should do it.

Mr. Barshay: I move to strike that out as not binding on the defendant.

The Court: Motion denied.

Mr. Barshay: Exception.

3994

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Q. Was there a time when the daughter left the room?

Mr. Barshay: Now, Mr. Turkus—

Mr. Turkus: There has to be some time—

Mr. Barshay: Let him say what happened, please. I object to it as leading.

Mr. Turkus: I insist it is proper.

The Court: I think it is proper. Objection overruled.

3995

A. Her father told her to go. She left. She wanted her father to go along with her, but he stayed.

Mr. Barshay: I move to strike it out.

Q. (The Court): Did she say that? A. Yes, sir.

The Court: Motion denied.

3996

Mr. Barshay: Exception.

Q. Now, after the daughter left was there a further discussion? A. There was.

Q. What was said? A. Joe Rosen started to cry; he said he was being ruined; his business would be lost; he would have nothing left; he was in business all his life and was being pushed out of the clothing business. And Lepke said, "Don't worry, we will do something for you. You have nothing to worry about. If you have any trouble in the concern, we will do something for you."

Q. After that did Rosen leave? A. Then Rosen left, yes, sir.

Q. Can you recall who took the book? A. Joe Rosen.

Q. After that occurrence did you have further talks with Lepke in regard to this stoppage of the clothing trucks? A. Yes, sir.

Q. Was there any talk in which the name of Louis Cooper was mentioned? A. Yes, sir.

Q. Tell the Court and jury what was said in that talk.

3998

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception. May we fix the time, please, and the place?

Mr. Turkus: This has a bearing on the stoppage.

The Witness: In the summer of 1932, prior to the stoppage.

Mr. Barshay: Exception.

Q. (The Court) Where was this talk held? A. In the clothing district, your Honor.

3999

Q. All right, tell us this conversation you had with Lepke in which Louis Cooper's name was mentioned. A. I reminded Louis Cooper that the question of getting Louis Cooper to stop was very important; that he was a big cog in the success of this proposition. And he said he already had an appointment with Louis Cooper.

When you say, "he", who do you mean? A. Lepke; that he already had talked with Louis Cooper, or at least had an appointment with

4000

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Louis Cooper. He wanted me to go up and see him with him.

Q. Did you go with Lepke thereafter and see Louis Cooper? A. Yes.

Q. In relation to that talk you just told the jury about, when did you go with Lepke to see Louis Cooper? A. In the summer of 1932, prior to the stoppage.

4001

Q. How long after the talk, when Lepke said to you that he had an appointment with Louis Cooper, was it you went with Lepke to meet Louis Cooper? A. Either that day or the next day or the day after—a very short time after.

Q. Can you recall when you and Lepke met Louis Cooper? A. I think we met him for the first time in a speakeasy in 30th Street.

Q. In Manhattan? A. Yes, sir.

Q. Will you relate to the Court and jury the conversation that took place between Lepke, Cooper and yourself?

4002

Mr. Barshay: I urge my objection to that.

The Court: Objection overruled.

Mr. Barshay: Exception.

Mr. Cuff: We object on behalf of Weiss also.

The Court: Objection overruled.

Mr. Cuff: Exception.

A. Louis Cooper told Lepke—Lepke told Louis Cooper he would have to stop his trucks—that there is going to be a stoppage.

Mr. Barshay: I move to strike it out.

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4003

The Court: Motion denied.

Mr. Barshay: Exception.

Q. When Lepke told that to Louis Cooper, what did Louis Cooper say? A. He refused. He said he was double-crossed by the Amalgamated once before and does not intend to be double-crossed by them again.

Mr. Barshay: I move to strike that out as not binding on this defendant, what the Amalgamated did.

4004

Mr. Turkus: The Amalgamated and Lepke have now been established as being like this (indicating).

Mr. Barshay: I again ask for the withdrawal of a juror and the declaration of a mistrial on the ground of created prejudice.

The Court: Motion denied.

Mr. Barshay: Exception.

Mr. Barshay: I came here, if I may state, to defend a man charged with a specific crime set forth in the indictment.

4005

The Court: Don't forget it.

Mr. Barshay: I am not forgetting it, but the District Attorney has gone far afield. I made serious, strenuous objections from time to time about long before 1932, when there was absolutely nothing to do between the Amalgamated and this case. All this was brought out only for one purpose, I regret to say—it was used as a political sounding board. It was calculated to be tried out this very way, on campaign material, that has

4006

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nothing to do with the case. Mr. Turkus has gotten away from it by his very questions and answers. This has nothing to do with the case and it is calculated to prejudice the jury in addition. I have refrained from doing this, but I told Mr. Turkus his questions would compel me to do so, even though I did not want to. It is not fair.

4007

The Court: Your objections have been strenuous. They have been fervid. There has been no politics brought into the case. The Court suggests that during recess you take a breather. Proceed.

Mr. Barsbay: Exception.

Q. After Louis Cooper spoke about the double-crossing, what did Lepke say? A. Lepke said, "You have nothing to do about worrying now, I am the Amalgamated, they will not double-cross you this time."

4008

Q. Did Cooper respond to him? A. Not immediately.

Q. What did he say, what did Cooper say after he disclosed that? A. He still refused. He said, "You don't know them as I do; you have not had dealings with them; I did." Finally, he said, "If you will come with me, if you will be my partner, I will stop."

Q. When Cooper said to Lepke, "If you will be my partner, I will stop," what did Lepke say? A. He said, "I will be your partner."

Q. Did Cooper then, after Lepke said he would be his partner, agree to stop the trucks on a designated day? A. He did.

Q. Finally, did this stoppage actually occur?

A. It did.

Q. Did any clothing trucks move or roll? A. The Branch Stores were the only trucks that rolled.

Q. Did the New York and New Jersey Transportation Company's trucks remain immobile?

A. They did.

Q. Now, you told the jury one of the talks you had mentioned to Lepke was about getting additional business for the New York and New Jersey, was the name of the Fvirsky Clothing Company; do you remember that? A. That is right.

4010

Q. Did the Fvirsky Clothing account go to one of the men who had been a partner of the New York and New Jersey, after the stoppage? A. It went to the whole concern.

Q. Were there certain cards then issued after the stoppage? A. Yes, sir, they could not start unless they got the O. K. card given out by a committee composed of Amalgamated officials.

Q. What happened to Rosen insofar as the clothing trucking industry was concerned? A. He was out of the concern.

4011

Mr. Barshay: I object to the form of the question.

The Court: Try to make that more specific.

Mr. Turkus: I don't know how to make it more specific than that.

The Court: I don't know what it calls for. Try it.

4012

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Q. Did Rosen continue in business as a clothing trucker?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. He did not.

4013

Q. Now, after the trucks started to roll again, after the stoppage was settled, did Rosen have a talk with you? A. He did.

Q. Where did you have a talk with him? A. On Fifth Avenue.

Q. Do you recall any specific location? A. I usually stood around 17th Street and Fifth Avenue.

Q. Is that the hub of the clothing district? A. It is, and then the Association's office is on 17th Street, 22 East, so I made Fifth Avenue and 17th Street sort of a hangout.

Q. What did Rosen say to you?

4014

Mr. Barshay: I object.

Mr. Talley: I object.

Mr. Barshay: Rosen have a talk with this man, the defendant not being present?

The Court: That is not competent.

Mr. Turkus: Yes, it is.

The Court: What Rosen said to him?

Mr. Turkus: Yes, because it was transmitted to the defendant. It will be connected.

The Court: You will have to show that before it is let in. Let it stand that he had a conversation. The conversation with

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4015

Rosen, and about the hangout at Fifth Avenue and 17th Street.

Q. After you had that talk with Rosen did you see any of the defendants? A. I saw Lepke.

Q. Did you have a talk with Lepke? A. I did.

Q. What did you say to Lepke? A. I told him I just met Rosen, and that Rosen said—

Mr. Talley: I object to what this witness said that Rosen said to the defendant, or to anybody else.

4016

The Court: Objection overruled.

Mr. Talley: Exception.

The Witness: (Continuing): And that Rosen said that Lepke and I had promised him that he would be taken care of, and that here the stoppage has taken place and everybody has gone back to work and he is on the street.

Q. What did Lepke say to that? A. Lepke said, "What can we do with him?", and I said, "He once worked for Louis Cooper as a foreman, let us get him back there."

4017

Q. Did Lepke say anything in reply to that? A. He said he would get in touch with Louis Cooper.

Q. Thereafter, did you and Lepke and Louis Cooper meet? A. We did.

Q. Where did you meet? A. To the best of my recollection, it was a concern named Rosenblatt Brothers.

Q. A clothing concern? A. Yes, sir.

Q. What did Lepke say to Louis Cooper at

4018

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that meeting? A. Lepke told Louis Cooper to put Joe Rosen to work.

Q. Did he say why? A. He said that he had promised to put him to work— "You got to put him to work." And Louis Cooper said no, he would not put him to work, that while he is a very good foreman, he is a loud-mouthed gay.

Q. After the stoppage and the clothing truck concern wound up—

4019

Mr. Barshay: I object. What has that got to do with these defendants?

The Court: Objection overruled.

Mr. Barshay: Exception.

The Court: The court will charge the jury at the proper time, if the case is connected up.

A. The Garfield Express Company got all of the New Jersey business—all of it—with the exception of knee pants, which is considered the smallest part of the clothing business.

4020

Mr. Barshay: I move to strike out the word, "considered."

The Court: Motion denied.

Mr. Barshay: Exception.

Q. After the stoppage did the Garfield Truck Company get the New Jersey business that the New York and New Jersey Transportation Company had had before the stoppage, with the exception of the knee pants business which you have indicated?

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4021

Mr. Barshay: Objected to as a conclusion; secondly, it is entirely irrelevant.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. They got all of the suiting business, all of it.

Q. When Cooper said to Lepke that he did not want him, he was a loud-mouthed guy, to use the language you used to the jury, what did Lepke say to Cooper? A. Lepke said that they should put him to work—"You have most of the New York and New Jersey business and it is advisable you put him to work."

4022

Q. After that what did Cooper say? A. He consented to put him to work at \$100. a week.

Q. In what position? A. As a foreman.

Q. After that arrangement had been made did you see Rosen? A. I did.

Q. Under instructions? A. Of course.

Q. Under whose instructions? A. Lepke's.

Q. What did you tell Rosen? A. After the stoppage, it was also in the summer of 1932—

4023

Q. (Interrupting) Answer my question.

The Court: We will now have a noon recess on account of this man's condition. His hour is about up. We will resume at two o'clock.

(To the jury:) Members of the jury, remember the admonition previously given, and follow it. Now, the jury may pass out.

(The defendants were then remanded.)

(Recess taken until two P. M.)

4024

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AFTERNOON SESSION. TRIAL RESUMED.

MAX RUBIN, resumed the stand and testified further as follows:

By Mr. Turkus:

4025

Q. At the point of recess, Mr. Rubin, I believe you got to where you told us that at the meeting between Lepke and Cooper, Cooper agreed to put Joseph Rosen to work and you were instructed by Lepke to report that fact to Joseph Rosen. Do you recall that? A. That is right.

Q. In pursuance of the instructions from Lepke, did you see Joseph Rosen? A. I did.

Q. Did you tell him he could go to work for Cooper of the Garfield Express? A. I did.

Q. And did he do so? A. He did.

Q. After some time elapsed, did Joseph Rosen speak to you again? A. Anywhere from eight months to a year later, I believe.

Q. Where did he speak to you, Mr. Rubin? A. On Fifth Avenue.

4026

Q. What did he say to you?

Mr. Barsbay: I object to it.

The Court: Sustained.

Q. Did you, after you had the talk with Rosen—was it in the clothing district that you had the talk? A. It was.

Q. After you had that talk with Rosen in the clothing district at the time you have already related, did you see Lepke? A. I did.

Q. Did you talk to Lepke? A. I did.

Q. What did you say to Lepke? A. I told

Lepke that I had seen Joseph Rosen and Joseph Rosen's wife and Louis Cooper; that I went to Louis Cooper because of a statement made to me about Joe Rosen—a statement made to me by Joe Rosen that he was fired for stealing some hampers and I told him that I went to Louis Cooper and I said to Louis Cooper, "Put that man back to work. That is no reason to fire a man off a truck, for stealing some hampers, if he stole them." And he said, "I am not putting him back." I looked for Lepke and could not find him. In the meantime Mrs. Rosen came to me and I continued telling Lepke the story.

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Q. Yes, continue to tell us. A. This is what I told Lepke. I said, "Mrs. Rosen saw me and I took her over to see Louis Cooper and Louis Cooper told her in front of me that he is not putting him back to work, putting Joe Rosen back to work." And I said, "We cannot afford"—I said this to Lepke—I said, "We cannot afford to have a woman on Fifth Avenue hollering that her husband has lost a job and been put out of business; we better put him back."

4029

Q. In substance then did you relate to Lepke what Joe Rosen had told you in the clothing district? A. I did.

Q. And did you relate in substance, as you have told the jury, what happened in reference to the incident of Mrs. Rosen and Cooper? A. I did.

Q. And had there been such a meeting by you and Mrs. Rosen and then a meeting with Cooper and Mrs. Rosen? A. There was.

Q. And did you give Lepke an accurate report of what had transpired?

4030

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Mr. Barshay: I object to the word "accurate."

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. After you made this report to Lepke of what had transpired between the Rosens and Cooper, what did Lepke say to you? A. He would get in touch with Louis Cooper for me.

4031

Q. Did there come a time when you and Lepke spoke to Cooper? A. We did.

Q. How long after that report that you had made was that conversation? A. A question of days.

Q. Do you recall where you met Cooper with Lepke? A. I think it was on 18th Street and Fifth Avenue. I am not certain.

Q. With you, Lepke and Cooper there, what was said? A. Lepke asked him—Lepke asked Louis Cooper to put the man back to work and Louis Cooper said he would not, and I said, "You have got to put him back to work. We had trouble enough and we don't want any more trouble. We want to put the man back to work," and Louis Cooper said he would not do it, he is not going to put him back to work because he bit the hand that fed him and he is not going to put him back to work.

4032

Q. Now, when Cooper said that Rosen bit the hand that fed him, did Lepke say anything? A. Lepke turned to me and said, "I can't do anything about this. We make a God damn good living out of this over here and if Louis Cooper wants to run it that way, that's the way

he is going to run it." I said, "If that's good enough for you, it is good enough for me."

Q. Is that what you said to Lepke? A. Yes.

Q. Is that how the meeting broke up? A. That is how it broke up.

Q. After that meeting did Rosen come to you and talk to you? A. Rosen came to me and talked to me after that meeting, yes, sir.

Q. How many times? A. Oh, he was out of work for sixteen months.

Mr. Barshay: That is not responsive.

The Witness: Dozens and dozens of times.

Mr. Barshay: Excuse me. I move to strike out the answer as not responsive.

The Court: Let it stand.

Mr. Barshay: Exception.

Q. How long was Rosen out of work? A. Sixteen months.

Q. And during the sixteen months that he was out of work, did he come and talk to you time and again? A. He did.

Q. Each time that Rosen came to you and spoke to you, did you report to Lepke? A. I would not say each time but very, very often.

Q. On the times that you did report to Lepke, what did you say to him about Rosen? A. I told him that Rosen was complaining that he is out of work, hasn't got what to eat, married man with a family—words to that effect.

Q. You said he was out of work, Rosen was, for about sixteen months. Towards the end of that period of unemployment, did there come

4036

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a time when Rosen had a talk with you? A. Yes.

Q. Was that talk subsequently reported to Lepke? A. It was.

Q. What did Rosen say—in substance? A. I just gave a mere outline.

Q. Tell us first what Rosen said to you near the end of that sixteen months unemployment period? A. Before, Mr. Turkus?

4037

Mr. Barshay: What Rosen said to him? That is your question?

Mr. Turkus: Yes.

Mr. Barshay: I object to it.

The Court: Sustained.

Mr. Turkus: Does your Honor recall that I showed that that conversation was reported subsequently to Lepke?

The Witness: No, it was not completely reported to Lepke. It was not.

The Court: He can tell only what he reported to Lepke.

4038

Q. First, let me ask you this: At the time when you had that talk with Rosen, approximately when was that? A. I think it was in 1935. I am not sure.

Q. Was it before or after the appointment of Thomas E. Dewey as a special prosecutor?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. It was.

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4039

Q. It was what? A. After the appointment of Dewey,

Mr. Turkus: I ask that this paper be marked for identification.

(Paper marked People's Exhibit Z-2 for identification.)

Mr. Turkus: I further ask that this additional paper be marked for identification.

4040

(Paper marked People's Exhibit Z-3 for identification.)

Mr. Turkus: I offer in evidence Z-2 and Z-3, being, respectively, the order of the appointment of Extraordinary Special and Trial Term of the Supreme Court, and appointment and oath of Thomas E. Dewey.

Mr. Barshay: I object to it. If Mr. Turkus will give me a date when Mr. Dewey was appointed for that purpose, I will concede it.

4041

The Court: It has not been connected up yet. Offer it later. Excluded at this time.

Q. After you had that talk with Rosen, I understood you to say you reported to Lepke; you went back and spoke to Lepke? A. That is right.

Q. Did you tell Lepke everything that Rosen had told you? A. No.

4042

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Q. Tell us what part of the conversation that you had with Rosen that you told Lepke? A. I told him, "We have a desperate man on our hands. Something has to be done."

Mr. Barshay: Excuse me, please. May the witness just answer what Rosen said to him which he conveyed to Lepke, not his own impression.

Mr. Turkus: That is what he is telling.

4043

Mr. Barshay: Please, Mr. Turkus, I have an objection. He is now giving his impression of Mr. Rosen to this jury.

The Court: Proceed.

Mr. Turkus: (To reporter) Will you read to the witness—

Mr. Barshay: May I have a ruling, your Honor?

The Court: What is before the Court?

Mr. Barshay: I object to it.

The Court: This is proper. The conversation is proper.

4044

Mr. Barshay: I do not object to the conversation, sir. I merely object to that part of this man's description.

The Court: The conversation with Lepke is proper.

Mr. Barshay: I do not object to that part. He started off—

The Court: He says he told Lepke that they had a desperate man on their hands. That is proper.

Mr. Barshay: Exception.

Q. Will you continue where you said to him, "We have got a desperate man on our hands."

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4045

Continue to tell the jury what you said to Lepke. A. I said to Lepke, "We have a desperate man on our hands", that we have to get him a job; he will work for anything; he is talking a whole lot and we are liable to get into a lot of trouble with this but he is willing to go to work for any price, anywhere.

Q. Did you suggest to Lepke any place where Rosen might get employment? A. I did.

Q. What did you say? A. I told him that Larry Cooper—no relation to Louis Cooper—has a man on his job by the name of Meyer Cranes.

4046

Q. Spell the name. A. (Spelling) C-r-a-n-e-s—and that Larry Cooper does not want this man Meyer Cranes on his truck and if I can get a switch, that is transfer this Meyer Cranes over to Louis Cooper's job, which means the Garfield Express Company, I could get Joe Rosen on Larry Cooper's truck.

Q. In other words, Rosen, having been fired from Cooper, you could get Cranes to work for Cooper and give Rosen Cranes' job? A. That is right.

4047

Q. The job with Larry Cooper, no relative of Louis Cooper? A. That is right.

Q. What did Lepke say to that? A. He would get hold of Louis Cooper.

Q. After that talk, did you have a meeting with Louis Cooper and Lepke? A. We did.

Q. Do you remember where that was? A. Passaic.

Q. Is that where the Garfield Express had its place of business? A. That is right.

Q. What happened there? A. Louis Cooper—

4048

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Lepke asked Louis Cooper to put this Meyer Cranes to work and Louis Cooper said he would not do it and I asked him why wouldn't he do it, it is very important that we get Joe Rosen to work, it is very, very important, and Louis Cooper still said he would not do it. He said the fellow was too small—he is only about five foot two or something like that—and he said he is no good for this job and Lepke turned to Louis Cooper and said, "It is very important for us if we put him to work", and then Louis Cooper said, "All right, I will take him. Make the change."

4049

Q. Had Louis Cooper himself one time been business agent of Local 240 of the Clothing Drivers & Helpers Union? A. He was.

Q. And that is the union for all of those clothing truckers, that is the drivers of trucks? A. That is right.

Q. Was Cranes in fact a small man about five foot two or thereabouts? A. That's all he was, still is as far as I know.

4050

Q. Finally was the arrangement made whereby Rosen went to work for Larry Cooper? A. He did.

Q. Did Meyer Cranes work for the Garfield? A. He did.

Q. Some months thereafter, did you learn that Rosen had opened up a candy store? A. I did.

Q. In the Brownsville district of Brooklyn? A. Yes, sir.

Q. Earlier in your testimony you told us that you had been doing business with Lepke in connection with the Greater New York Tailors Expressmen's Association and the Flour Truck-

men's Union. Do you remember that? A. That is right.

Q. Was that business relationship continuing between you and Lepke at this time? A. It was.

Q. Were you then seeing Lepke frequently in connection with the business that you had in connection with Flour Truckmen's Union and the Greater New York Tailors Expressmen's Association?

Mr. Rosenthal: I object to it—in no-wise connected with this issue.

4052

The Court: Overruled.

Mr. Rosenthal: Exception.

A. I did.

Q. How often were you then coming in contact with Lepke? A. Very often, almost daily when he was around.

Q. What places were you meeting Lepke at? A. In 1935?

Q. Yes. A. In Greenberg & Shapiro and I believe the Perfection Coat Front.

Q. You say Greenberg & Shapiro was one of the places. Was that Shapiro of Greenberg & Shapiro related to the one that you called Charlie Gurrah Shapiro?

4053

Mr. Barshay: Object to it. It is immaterial.

The Court: Overruled.

Mr. Barshay: Exception.

A. A brother.

Q. In the year 1936, where were you meeting Lepke? A. 200 Fifth Avenue.

4054

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Q. What was the name of the concern at 200 Fifth Avenue where you had these meetings with Lepke? A. Raleigh Clothing Company.

Q. Do you remember what floor the Raleigh Clothing Company was on? A. Tenth.

Q. In these numerous meetings which you have described to the jury, did you talk to Lepke on those occasions? A. I did.

4055

Q. I specifically direct your attention to a book of matches. Was there a talk in which a book of matches was mentioned?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. There was.

Q. Where was that talk in which a book of matches was mentioned? A. Raleigh Clothing.

Q. Earlier in your testimony you said that you knew Lepke by some other name and you mentioned the word "telephone" in connection with it. Do you remember that? A. That is right.

4056

Q. Tell us the incident about this book of matches and the conversation that was had?

Mr. Barshay: I object to it unless it has a bearing upon the issue here.

The Court: I cannot tell. Overruled.

Mr. Barshay: Exception. Mr. Turkus can tell.

The Court: Go ahead.

Mr. Barshay: Exception, sir.

A. May I have the question repeated?

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(Pending question read by the reporter.)

A. Lepke pointed out an ordinary book of matches, opened it up, and on the inside, like this (demonstrating) he had two telephone numbers. He read them both off to me and he says, "Do you know the numbers?"

Q. Tell us what numbers he read off to you, if you can remember them? A. I can remember one very well.

Q. Tell us the one you remember very well?

A. He read off Gramercy 5—9043.

Q. Did you recognize that telephone number when he read it off? A. Of course.

Q. What was the telephone number, of whom?

A. That was the number of the Greater New York Tailors Expressmen's Association, where I used to hang out.

Q. For years? A. Since they moved in there.

Q. When Lepke read off that telephone number, Gramercy 5—9043, the telephone number of the Greater New York Tailors Expressmen's Association, what did you say to him? A. I said, "Gee whiz, that's the number of the association."

4059

Q. What did Lepke say? A. He told me not to use the 'phone any more, that the wire was tapped.

Mr. Barshay: I move to strike out the answer. It is apparently incompetent, irrelevant and immaterial to this issue, sir.

The Court: Denied.

Mr. Barshay: Exception, sir.

4060

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Q. Tell us the name that you knew Lepke by on the telephone?

Mr. Barshay: Same objection, sir.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Tell us. A. The name is Murphy.

Q. You mean when you called him on the telephone you asked for Murphy? A. That is right.

4061

Q. And when you asked for Murphy, whom did you get?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Whom did you get when you asked for Murphy? A. Lepke.

Q. When you asked for Gurrah on the telephone, what name did you ask for?

4062

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. Callahan.

Q. And when you asked for Callahan, whom did you get on the wire? A. Gurrah.

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

Q. After you had that talk with Lepke about that number in the book of matches that he had

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4063

written down, did he say anything to you in reference to the building 200 Fifth Avenue?

Mr. Barshay: Same objection.

The Court: Overruled.

A. He told me not to use the same exit that I used in going in.

Q. Were there various entrances and exits to 200 Fifth Avenue? A. There were.

Q. Tell us about those entrances and exits.

4064

Mr. Barshay: I object to it. It is immaterial.

The Court: Overruled.

Mr. Barshay: Exception, sir.

A. There is one on Broadway, one on 23rd Street, and one by going into the subway by the Flatiron Building; you go through the street, a tunnel there; you get into the building.

Q. So there was a tunnel entrance that you could go through from the subway to get into that Flatiron Building? A. That is right.

4065

Q. After Lepke gave the warning to you that you told the jury, when he was looking at that number in the—withdrawn.

After Lepke gave you the instruction or warning to be careful and use different exits coming into the building, did he ever talk to you about Joseph Rosen again? A. In June of 1936.

Q. What did he tell you about Rosen then? A. He told me the fellow was going around Brownsville, shooting off his mouth that he is going to go down to Dewey's office.

Q. What did you say to Lepke when he told

4066

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you that? A. I said, "It does not mean anything. The fellow is harmless. He must be broke and need a couple of dollars. Let me take care of it."

Q. Did you suggest to Lepke how you would take care of it? A. I did.

Q. What did you say? A. I told him I would tell my members to go to the store and do their shopping there, purchase whatever is needed, and I am sure the fellow would keep quiet.

4067

Q. What members were you then referring to when you spoke to Lepke? A. Members of the union that I represented, Local 240.

Q. After you made that suggestion about having the members of the union patronize the candy store, what did Lepke say to you? A. He said, "I don't care what you do as long as he keeps quiet."

Q. Did you talk to the members of your union? A. I first called a meeting of the Executive Board and I told them—

4068

Mr. Barshay: I object.

Q. Relate the conversation.

Mr. Barshay: I object to what he said, in the absence of the defendant.

Mr. Turkus: The Judge will rule.

Mr. Barshay: I intend that he shall.

The Court: Sustained.

Q. All right, was there a meeting of your union? A. There was.

Q. Without stating the conversation, did you address the meeting? A. I did. There were two

meetings, an Executive Board meeting and a regular meeting.

Q. And did you address both of the meetings?

A. I did.

Q. After the meetings of the Executive Board and the members, did you talk with Lepke? A. I did.

Q. What did you tell Lepke? A. I told him that I had called a meeting of the Executive Board and at the regular meeting of the local and at the Executive Board I suggested to the members that they take \$25 from the treasury and bury it in some other item and go into the store and spend the money; that the Executive Board members should do it; and I told Sneaky Levine, Sammy Levine, who was the president of the local at that time, to be sure and see that it is done. Then I called a meeting of the regular members and I spoke to them about taking care of old-timers, that old-timers must be taken care of, and I explained to Lepke just what I had done.

4070

Q. When you explained to Lepke just what you had done about the expression "old-timers", did you tell him what had occurred at the union meeting? A. I did.

4071

Q. Tell us how you referred to Rosen in that conversation? A. I referred to him as an old-timer.

Q. And were you making the report to Lepke of what had transpired in the union? A. I did.

Q. Did you tell Lepke what the reaction of the union members was about doing these things?

A. They all said they were going to go to the store.

Q. Did you tell that to Lepke? A. I did.

4072

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Q. What did Lepke say after you told him about that? A. O. K.

Q. Did there come a time later on when you had another talk with Lepke about Joseph Rosen? A. There were two or three talks, I believe.

Q. Well, specifically I want to direct your attention—

4073

Mr. Barshay: Your Honor, will you tell the District Attorney please not to lead?

The Court: I want to hear the question.

Mr. Turkus: (To reporter) Read the one prior and read the question.

(Prior question and pending question read by the reporter.)

Mr. Turkus: That is as far as I have gotten.

The Court: Finish the question.

Mr. Barshay: Exception.

4074

Q. --Some time around July in the year 1936. Do you follow the question? A. Yes, I do. He told me again that Rosen was talking and going around to Brownsville, going around in Brownsville, and saying he is going to do down to Dewey's office and is going to speak about Lepke, and I again said there was nothing to worry about that man, he must be up against it, there is no harm in him, there is absolutely nothing to worry about.

Q. After you made that report to Lepke, did you meet a man by the name of Louis Feinberg?

A. I did.

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4075

Q. Who was Louis Feinberg? A. The secretary-treasurer of Local 240.

Q. The same local for which you were the business agent? A. That is right.

Q. Did Feinberg say something to you? You cannot relate the conversation. A. Yes, Feinberg did.

Q. After Feinberg spoke to you, did you go and talk to Lepke? A. I did.

Q. Tell us what you said to Lepke? A. I told Lepke that Sylvia Rosen had called and asked for me and Feinberg had told her that I was not in and then she left a message for me to go over and see her father in the candy store; and then I told Lepke that now is a good chance for me to go over there, I am sure I can straighten out Joseph Rosen.

4076

Q. What did Lepke say? A. He said, "Go ahead, if you can straighten him out."

Q. Is any other talk that you had with Lepke before that, did Lepke make any suggestion to you about Rosen? A. He always spoke about him talking, that's all. He wants him quit.

4077

Q. When you told him about that telephone call from the daughter of Rosen, what was the discussion then in connection with Rosen?

Mr. Barshay: Your Honor, I object to it. It has already been answered, the answer being, "Go ahead."

The Court: That is what he said.

Mr. Turkus: Well, what I want to do is continue the conversation from that point.

Q. What did Lepke say to you?

4078

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The Court: I have it here, "Lepke said, 'Go ahead, if you can straighten him out.' "

Q. Well, when Lepke said, "Go ahead," did you say something to him? A. Yes.

Q. All right, what did you say to Lepke? A. I said to him, "I will need some money."

4079

Q. Now, when you said to Lepke, "I will need some money," what did Lepke say to you? A. He said, "How much money have you got?" I took out Lepke's money that I had in my pocket and I had about \$500 there. I said, "I have about five hundred or six hundred"—I don't remember the amount. He said, "You take two bills and give it to Joe Rosen and tell him to stay out of town until I tell him to come back."

Q. How much is "two bills"? A. Two hundred dollars.

Q. How did Lepke refer to Rosen when he told you to take two bills and tell him to go out of town and stay out of town?

4080

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Let him give the conversation.

The Court: Overruled.

Mr. Barshay: Exception.

A. He swore at him.

Q. Well, what was the epithet? A. Son of a bitch.

The Court: Tell him to stay out of town until when?

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The Witness: Until he tells him to come back.

Q. That five or six hundred dollars that you had in your possession, was that as the result of some financial transactions that you had been having with Lepke?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

4082

A. Yes.

Q. And was it with the Flour Truckmen and the Greater New York Expressmen's Association? Was that the business?

Mr. Barshay: Same objection.

The Court: Same ruling.

Mr. Barshay: Exception, sir.

A. Yes.

Q. When Lepke told you what you have related to the jury about the two bills and the message to be given to Rosen, did you agree to do it?

4083

Mr. Barshay: I object to the District Attorney repeating the answer in the subsequent question. We understand what was said.

The Court: Overruled.

Mr. Barshay: Exception, sir.

(Pending question read by the reporter.)

A. I did.

Q. Did you thereafter go to Joseph Rosen's

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candy store? A. I took Feinberg with me and went to Joseph Rosen's candy store.

Q. At that time did you know where it was?

A. I did not.

Q. Who took you to the candy store? A. Louis Feinberg.

Q. When you went there with Feinberg, did you find Rosen in the candy store? A. I did.

Q. Did you have a talk with Rosen? A. I did.

4085

Q. Was part of the conversation in the presence of Feinberg? A. It was.

Q. Was there a part of the conversation in the absence of Feinberg? A. It was.

Q. Tell us what you said to Rosen in connection with the two bills as directed by Lepke?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barsbay: Exception. This is a conversation with Rosen in the absence of the defendant.

The Court: I beg pardon?

4086

Mr. Turkus: Under instructions from Lepke to deliver the two bills and the message.

Mr. Barshay: Mr. Turkus knows it is not competent.

Mr. Turkus: I know it is competent. There is agency.

The Court: This is special ground and should be on the minutes. Overruled.

Mr. Barshay: Exception. You cannot prove agency by the agent.

The Court: Overruled.

Mr. Barshay: Exception.

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4087

Q. Tell us. A. Feinberg went into the telephone booth and Rosen and I walked to the side of the telephone booth away from Feinberg so that he could not see us and I said, "Here is \$200 from Lepke. He wants you to go away and you are to stay away until he tells you to come back."

Q. When you said that, did you give Rosen the \$200? A. I did.

Q. What did Rosen say when he got the \$200 and that message?

4088

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. Rosen said to me he was going to his son's place in Reading, Pennsylvania, but if he could get another thousand dollars he would sell the store and open some sort of business there.

Q. And where was the son's place of living at that time? A. I said Reading, Pennsylvania.

Q. And was that where Rosen said he would open up another place of business if he could get another thousand dollars? A. Yes.

4089

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

Q. When he told you that about opening up a place of business out of the State of New York, what did you say to him? A. I said, "I will take it up with Lepke."

Q. When Rosen accepted the \$200 under those circumstances that you have related to the Court

4090

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and jury, did he tell you where he was going? A. Reading, Pennsylvania.

Q. After you delivered this \$200 to Joseph Rosen and the message, did you go back to see Lepke? A. I did.

Q. What did you say to Lepke? A. I told Lepke that I had given Rosen the \$200 and that he was going up to his son's place in Reading, Pennsylvania, and that if he had another thousand dollars he would stay up there and open some kind of a business.

4091

Q. Did Lepke make any response to that? A. Not that I recall.

Q. Approximately when was this \$200 and the message delivered to Rosen? A. July, 1936.

Q. After that delivery of the \$200 and the message, in July, 1936, when was the next time that Lepke spoke to you about Joseph Rosen? A. Friday, September 11, 1936.

Q. Friday, the 11th of September, 1936? A. That is right.

Q. You remember that date? A. Vividly.

4092

Q. What did Lepke say to you on Friday, September 11, 1936, about Joe Rosen? A. I no more than stepped into the office of the Raleigh Clothing Company when Lepke, his face flushed—

Mr. Barshay: I object to the description, sir.

The Court: It is responsive. Leave out the "flushed."

A. (Continued) Lepke said to me, "I have stood enough of the crap that you have been

handing me. That son of a bitch, that bastard, is going around Brownsville and shooting his mouth off that he is going down to Dewey. Well, he is not going down to Dewey or any other place. He and nobody else are going down any place or do any more talking or any talking at all." I said, "Louis, don't be rash; don't be foolish; don't do something that will get us into trouble. I can straighten it out. He is harmless. Leave him to me." "No, I have stood enough." I said, "Let me handle it. I will run over to Murray Weinstein. I am sure that Murray Weinstein will do something about it. Give me a chance to straighten the thing out. Don't forget I was in the store in July." He said to me, "I don't care where you go. Straighten the guy out." I ran as fast as I could, over to Murray Weinstein.

4094

Q. Did you have a talk with Murray Weinstein? A. I did.

Q. Before you ran over to Murray Weinstein, was there anything said in the conversation by Lepke with respect to the length of time that Rosen was in Reading, Pennsylvania? A. Yes, he said "He was only there for a few days. He double-crossed us."

4095

Q. When you said to Lepke that Rosen was harmless, what did he say to you? A. "The fact that he is going around, talking. Anybody can do us harm." This was in the heat of the Dewey investigation.

Mr. Barshay: I move to strike the latter part out.

The Court: Strike that out as irresponsible.

4096

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Q. When was that talk? A. September, 1936.

Q. Was the Dewey investigation under way?

A. And how.

Q. Where did you have that talk with Murray Weinstein? A. In his office.

Q. Where was it located? A. 15th Street and Union Square West, right on the corner.

Q. Weinstein was then, as he is now, the manager of that Cutters Local 4 affiliated with the Amalgamated? A. That is right.

4097

Q. Did you go back and talk to Lepke after you had the talk with Weinstein? A. I did.

Q. Relate that talk to the Court and jury that you had with Lepke after the visit to Weinstein. A. I said to Lepke—I come back from Murray Weinstein and I told Murray Weinstein that—I just don't know how to put it—

Q. Tell us the best of your recollection what you said to Lepke after you had the talk with Weinstein. A. I told Lepke that I went to Murray Weinstein and asked him to do something for me about Joe Rosen and that Murray Weinstein said he can't do anything.

4098

Q. Did you say anything to Lepke about an invitation from Weinstein? A. I then told him that Murray Weinstein said I should not worry, that the Local 4 baseball team was playing a baseball game in Vineland, New Jersey, and that he invited me out there to attend the game. The game was to take place Saturday afternoon which is September 12, 1936.

Q. After you told Lepke that you could not get Weinstein to do anything, what did Lepke say? A. He said, "Go ahead to the game."

Q. Do you know a man named Paul Berger?

A. I do.

Q. Is that Paul Berger the one whom you earlier in your testimony described as an intermediary between Lepke and the union? A. He is.

Q. Was Paul Berger's name mentioned that Friday, September 11, 1936?

Mr. Barshay: I object to counsel leading. He asked for the complete conversation, sir. I understood the witness to have given the complete conversation.

4100

The Court: Overruled.

Mr. Barshay: Exception.

A. He told me to get Paul Berger and send him up to him right away.

Q. Did you go to see Berger? A. I did.

Q. What did you tell Berger?

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Exception.

4101

A. I told him Lepke wants to see him.

Q. The following morning, September 12th, Saturday, did you go to that baseball game that Weinstein had invited you to? A. I took my wife and child and I went to the game in my car.

Q. Did you actually attend the game? A. I did not.

Q. Where was the game scheduled to be played? A. Vineland.

4102

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Q. Did you turn off from the route? A. I did.

Q. Where?

Mr. Barshay: I object to that. That is absolutely immaterial.

The Court: Overruled.

Mr. Barshay: How he went to New Jersey, what he did there.

The Court: Overruled.

4103

Mr. Barshay: Exception. This is not pursuant to instructions, let me say. He went there to accept an invitation to a baseball game. Whether he diverted his route and where he stayed and all that, is not relevant here, sir.

The Court: Proceed.

Mr. Barshay: Exception.

(Pending question read by the reporter.)

A. Along the road, there is a road that leads to Vineland and one to Atlantic City, and I took the road to Atlantic City. I don't remember any more.

4104

Q. What was the condition of your wife's health at that time?

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. She just did not feel well.

Q. Did you stay in Atlantic City? A. I did.

Q. What hotel? A. Breakers Hotel.

Q. How long did you stay there?

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4105

Mr. Barshay: Objected to, incompetent, irrelevant, immaterial.

The Court: Overruled.

Mr. Barshay: Exception.

A. Until Sunday about noon time.

Q. Did you see any members of the union at the hotel? A. Oh, yes.

Q. Did you see Murray Weinstein there? A. I did.

Mr. Turkus: I am going to renew my offer at this time of the Exhibits Z-2 and Z-3 for identification, the appointment of the Extraordinary Special and Trial Term of the Supreme Court and the appointment and oath of Thomas E. Dewey.

4106

Mr. Barshay: Same objection, and, again, if Mr. Turkus merely wants the date when Mr. Dewey was appointed, I will concede it.

The Court: Overruled.

Mr. Barshay: Exception.

Mr. Rosenthal: I object on behalf of defendant Capone.

4107

Mr. Talley: Same objection on the part of defendant Weiss.

Mr. Turkus: I ask that they be marked as separate exhibits.

Mr. Barshay: Will your Honor inspect them, please, before they are marked?

The Court: Yes.

Mr. Barshay: Especially with reference to No. 10066, photostatic copy, on the ground that it is incompetent, irrelevant,

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immaterial and an attempt to prejudice the jury.

The Court: Let me see it. Overruled.
Mr. Barshay: Exception.

(People's Exhibit Z-2 for identification received and marked People's Exhibit 33 in evidence. People's Exhibit Z-3 for identification received and marked People's Exhibit 34 in evidence.)

4109

The Court: Briefly, what is the date?

Mr. Turkus: Date of filing, July 3, 1935.

May I read People's Exhibits 33 and 34 in evidence to the jury?

The Court: Yes.

Mr. Turkus: (reading) "Certificate No. 10066.

"State of New York }
"County of New York } ss.:

4110

"I, ALBERT MARINELLI, Clerk of the County of New York and also Clerk of the Supreme Court in and for said county,

"DO HEREBY CERTIFY, that I have compared the within photographic copy of an order entitled Appointment of Extraordinary Special and Trial Term of the Supreme Court, etc., the original of which is filed and recorded in my office under Index Number Misc. 907—1935, File Number 28789—1935, Date Filed July 3, 1935, and I do further certify that such photo-

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graphic copy is a correct transcript of such record and of the whole of said original.

"~~IN~~ WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court and county at the City of New York, this 22nd day of October, 1936."

Signed "Albert Marinelli, Clerk of the County of New York and Clerk of the Supreme Court."

4112

Over to the left-hand side it has a seal and "No fee charged Pursuant to Law." Signed "Albert Marinelli, County Clerk."

At the top, on the left, is a seal. "State of New York, Executive Chamber, Albany.

"It appearing to my satisfaction that the public interest requires it;

"THEREFORE, in accordance with the statute in such case made and provided, I do hereby appoint an Extraordinary Special and Trial Term of the Supreme Court to be held at the County Court House in the County of New York on the 29th day of July, 1935, at ten o'clock in the forenoon of that day, and to continue so long as it may be necessary, for the purpose of inquiring into:

4113

"(1) any and all acts of racketeering and vice,

4114

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“(2) any and all acts of organized crime or any other crime,

“(3) any connection between such acts and any law-enforcement officials,

4115

committed or alleged to have been committed by any and all persons, including public officers, within the County of New York in violation of the provisions of the Penal Law of the State of New York or the penal provisions of any other general, special or local law; and

4116

I do hereby designate HONORABLE PHILIP J. McCook, of the City of New York, who is a Justice of the Supreme Court of the First Judicial District, to hold the said Extraordinary Special and Trial Term as hereinbefore described, and among other things to cause to be drawn according to law a Grand Jury to serve at the said Extraordinary Special and Trial Term of the Supreme Court; and

“I do further direct that notice of the appointment of the said Extraordinary Special and Trial Term of the Supreme Court and the designation of the said Presiding Justice be given by publication of this order on the eighth and fifteenth days of July, nineteen hundred and thirty-five, in the New York Law Journal, the New York Times, and the New York Herald Tribune, newspapers published in the Borough of Manhattan, County of New York.

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"This order shall supersede in all respects the order dated June 28th, 1935, appointing an Extraordinary and Special Trial Term of the Supreme Court to be held in the County of New York on the twenty-ninth day of July, 1935.

"GIVEN under my hand and the Privy Seal of the State at the Capital in the City of Albany this third day of July in the year of our Lord one thousand nine hundred and thirty-five.

4118

"HERBERT H. LEHMAN" (in ink)
and to the left the seal of the State of New York.

"BY THE GOVERNOR:

"Walter T. Brown

"Secretary to the Governor."

People's Exhibit 34:

"Certificate No. 10068.

4119

"State of New York /
"County of New York (ss.:

"I, ALBERT MARINELLI, Clerk of the County of New York and also Clerk of the Supreme Court in and for said County,

"Do HEREBY CERTIFY, that I have compared the within photographic copy of an Appointment and Oath of THOMAS E. DEWEY, the original of which is filed and

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recorded in my office, under Index Number Misc. 1064—1935, File Number (blank), Date Filed July 29, 1935, and I do further certify that such photographic copy is a correct transcript of such record and of the whole of said original.

4121

"IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court and county at the City of New York, this 22nd day of October, 1936.

"Albert Marinelli, Clerk of the County of New York and Clerk of the Supreme Court."

To the left, the seal and then "No fee charged Pursuant to Law, Albert Marinelli, County Clerk"

"District Attorney's Office, County of New York.

4122

"I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York and that I will faithfully discharge the duties of the office of Deputy Assistant District Attorney in the office of the District Attorney in and for the County of New York, according to the best of my ability.

"THOMAS E. DEWEY.

"Sworn to before me the 29 day of July, 1935.

P. McC. J. S. C."

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"State of New York
 "City and County of New York } ss.:

"To all who shall see these Presents,
 GREETING:

"Know ye, that I, WILLIAM COPELAND DODGE, District Attorney of the County of New York, do, pursuant to the authority conferred by law, hereby depute, constitute and appoint THOMAS E. DEWEY Deputy Assistant District Attorney in and for the County of New York.

4124

"Given under my hand at the office of the District Attorney in and for the County of New York, this 29th day of July in the year one thousand nine hundred and thirty five.

"WILLIAM COPELAND DODGE,
 "District Attorney."

with the seal to the right, and to the left:

4125

"Attest:

"George Groden,

"Acting Chief Clerk."

and the cover having: "Filed July 29, 1935, in the New York County Clerk's office."

By Mr. Turkus:

Q. I believe you had told me that you had seen Murray Weinstein in Atlantic City? A. I did.

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Q. And did you stay there up until Sunday sometime? A. Sunday noon.

Q. What time, approximately, did you leave Atlantic City? A. About noon time, a little before, perhaps.

Q. When did you arrive in New York City? A. About four o'clock.

Q. When after your arrival was the next time that you had seen a newspaper? A. The next morning.

4127

Q. What newspaper did you see the next morning? A. New York Times.

Q. What did you read in the New York Times?

Mr. Barshay: Objection.

The Court: Sustained.

Q. Did you read an account of—

Mr. Barshay: Mr. Turkus, the Judge just sustained the objection.

Mr. Turkus: It may have been on another ground. I want to show knowledge now, as to a certain event.

4128

The Court: All right.

Q. Did you read the account in the New York Times of the killing of Joseph Rosen? A. I did.

Q. After you read that account in the New York Times, did you go to see Lepke? A. I did.

Q. What did you say to Lepke? A. I said, "Now I am in trouble. I was there in July and now I am in real trouble." And he said to me, "You have nothing to worry about. Brooklyn is all right. You have nothing to worry about as far as Brooklyn."

Q. That was on Monday? A. On Monday.

Q. I direct your attention towards the end of the month of September, 1936, and ask you if you read an article in the New York Post. A. I did.

Q. When you read that article in the New York Post, where did you go? A. I took the paper with me and went up to see Lepke.

Q. Did you see Lepke? A. I did.

Q. Tell us what happened on that occasion when you were there talking with Lepke with a copy of the New York Post.

4130

Mr. Talley: May we have the date, Mr. Turkus?

Mr. Turkus: Toward the end of September, 1936.

Mr. Talley: I object to it, if your Honor pleases.

The Court: Overruled.

Mr. Rosenthal: On behalf of defendant Capone I object to it—subsequent to the time of the killing, in no wise binding upon him.

4121

The Court: Overruled.

Mr. Rosenthal: Exception.

Mr. Turkus: (to reporter) Will you read the question, please?

(Pending question read by the reporter.)

A. I said, "Look at this, look at this paper. Read it. It does everything but mention my name. It makes me a principal in a murder of that fellow."

Q. When you said that and you moved your

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hands as you did in the witness chair, were you pointing to something when you were talking to Lepke? A. I pointed to the article.

Q. When you said that, pointing to the article, what did Lepke say? A. Lepke said, "You have nothing to worry about. They are not asking for you. They are not looking for you. They are looking for Little Farvel. They are looking for Shimmy. They are looking for Mendy Weiss. They are not looking for you. You have nothing to worry about."

4133

Q. What was Shimmy's real name? A. ~~S~~idney Sales.

Q. Am I correct in the spelling of S-a-l-l-e-s? A. No, S-a-l-e-s, I believe.

Q. Just answer this question yes or no: Is Sidney Sales alive?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception. I move for the withdrawal of a juror and the declaration of a mistrial on the ground that it is prejudicial.

4134

The Court: Denied.

Mr. Barshay: Exception, sir.

A. No.

The Court: He said they are looking for whom?

The Witness: Little Farvel, Shimmy, and Mendy Weiss.

Q. You mean Farvel—what is his right name? A. Philip Cohen.

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Q. Who is Mendy Weiss? A. There he is, the man with the glasses.

Q. Indicating the defendant Weiss.

The Court: Who is Shimmy?

Mr. Turkus: Shimmy was "Sales."

The Witness: His name is Sidney Sales.

Mr. Talley: I object to it, if your Honor pleases, as not binding on the defendant Weiss.

4136

The Court: Overruled.

Mr. Talley: Exception. My motion is likewise to striking out, if your Honor pleases.

The Court: Denied. I will instruct the jury at the proper time on the application of evidence.

Mr. Talley: I take exception

Q. Now, when Lepke said, "Don't worry, they are looking for those three," naming them as you have named them to the Court and jury, did he say anything else? A. He said he is going to send them in when he is ready to send them in. He will send them in to be there. They wanted them for identification purpose.

4137

Q. Whom did he say he was going to send in? A. Shimmy and Farvel.

Q. What did he say about Mendy? A. He would not send him in.

Mr. Talley: Make the same objection, if your Honor pleases.

The Court: Overruled.

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Mr. Talley: Not binding upon the defendant Weiss.

The Court: He said he would send who?

The Witness: He would send in Shimmy and Farvel.

The Court: Send them where?

The Witness: To Brooklyn for identification. The police wanted to get hold of them.

4139

Mr. Talley: What is that?

The Witness: The police wanted them. They were hiding.

Mr. Talley: I move to strike the latter part out, if your Honor pleases, not responsive.

The Witness: You said, "Send them where?" didn't you?

Mr. Talley: I move to strike out that voluntary remark of this witness.

The Court: Yes, strike it out. Strike out, "They were hiding."

4140

Q. Sometime in October, 1936, did you have another talk with Lepke? A. I did. Every time I saw him I spoke to him.

Q. Well, what I am trying to direct your attention to now—

Mr. Barshay: Excuse me, Mr. Turkus. The man has not said that he does not recollect any such talk. Let us fix the date and let him give the answer without any suggestions, please.

The Court. Go ahead.

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4141

Mr. Turkus: I was in the middle of a question.

(Pending question read by the reporter.)

Mr. Barshay: I object to it. It is leading.

The Court: Overruled.

Mr. Barshay: Exception.

Q. —is the conversation after the names of Farvel, Shimmy and Mendy Weiss were mentioned. Now, sometime in October did you have a talk with Lepke? A. The early part of October.

4142

Q. What was said in that discussion?

Mr. Rosenthal: I make the same objection that I made before.

Mr. Talley: Same objection.

The Court: Overruled.

Mr. Talley: Exception.

A. He said, "See, you have nothing to worry about. Shimmy and Farvel went in. They are out. There is nothing to worry about." And I said, "What about Mendy?" He said, "I am keeping Mendy out."

4143

Mr. Talley: I move to strike that out as having no binding effect upon the defendant Weiss.

The Court: Denied.

Mr. Talley: Exception.

Q. Is the name of McCarthy, a former Assistant District Attorney, familiar to you? A. Yes.

Q. After that talk which you have just told

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the jury about, did you hear that name in the conversation with Lepke? A. I did.

Q. What did he say? A. He told me that McCarthy was going around saying he is going to make one of the best pinches he has ever made; he is going to collar Lepke and Gurrah for the Rosen murder.

4145

Q. When Lepke told you this about former Assistant District Attorney McCarthy, did he say anything to you about yourself? A. He told me I had to go away.

Q. What did Lepke tell you when he said to you you have got to go away? A. The early part of October.

Q. What did he say? What was the language he used? A. He told me I have to go away. "Things are very hot in Brooklyn." This McCarthy is going around and making those statements I just mentioned and that I have to go away.

4146

Q. What did you say to Lepke when he said you have got to go away? A. I didn't know where to go.

Q. What did he say to you then? A. He said, "I have got the spot for you. Go up with Danny Fields. Danny Fields is hiding up in Glens Falls. You go up there and you stay with him."

Q. Was Danny Fields the Danny Fields that you described earlier in your testimony as an intermediary between a union and Lepke? A. Yes, sir.

Q. Just answer this yes or no: Is Danny Fields alive?

Mr. Barshay: Same objection, sir, as I made before with respect to the man whom he identified as Shimmy.

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The Court: The witness's information as to the alleged death of Danny Fields may be hearsay. Sustained.

Q. All right. Lepke said for you to make arrangements with Danny Fields to go where he was. What did you say to Lepke? A. I told you before I said I did not know where to go, and he said up there. I said, "All right, I will go," after he told me.

Q. Did Lepke tell you who was to make the arrangements? A. He did.

4148

Q. Who? A. Paul Berger.

Q. Did Lepke tell you anything in reference to Paul Berger?

Mr. Barshay: Your Honor, I object to Mr. Turkus leading.

The Court: Do you object to the question?

Mr. Barshay: Yes.

The Court: Overruled.

Mr. Barshay: Exception, sir.

4149

A. He told me to take Paul Berger around and introduce him to the people that I was getting money from for Lepke.

Mr. Barshay: I object to it now. I move to strike out the answer.

The Court: Overruled. Denied.

Mr. Barshay: I now move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Denied.

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Mr. Barshay: I take an exception, and I specifically direct your Honor to the case of *People again Richardson* in 222 New York.

The Court: The part of that answer which refers to collecting money from people is stricken out as irresponsible and incompetent. The jury is instructed to disregard it.

4151

Q. Did you take Paul Berger to various places and introduce him? Yes or no. A. I did.

Q. After you made those introductions, did you go away? A. I did.

Q. Who made the arrangements? A. Paul Berger.

Q. Where did you go and with whom? A. I went with Paul Berger to a sort of coffee stand or lunch room along the road about fifty miles from New York, fifty to seventy-five, and there we met Danny Fields.

Q. After the meeting, where did Berger go? A. Berger went back to New York.

4152

Mr. Barshay: I object.

The Court: Sustained.

Q. Where did you go? A. I went with Danny Fields to Saratoga Springs.

Q. How long did you stay in Saratoga? A. One week.

Mr. Barshay: I object to it, immaterial.

The Court: Overruled.

Mr. Barshay: Exception.

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4153

Q. After that week elapsed, where did you go?

A. Came back to New York.

Q. Where in New York did you go? A. Hatfield Hotel.

Q. Was that a familiar hotel to you? A. Yes.

Q. Did you have to register there? A. No.

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Where is the Hatfield located. A. 28th or 29th Street and Madison Avenue.

Q. Manhattan? A. Manhattan.

Q. After you got into the Hatfield Hotel, did you communicate with anybody? A. I did.

Q. With whom? A. Either with Lepke direct or with Paul Berger to get Lepke for me.

Mr. Barshay: I move to strike out the answer. He says with one or the other.

The Court: Let it stand.

Mr. Barshay: Exception, sir.

4154

4155

Q. After that communication was made, did you see Lepke? A. I did.

Q. Where? A. At the hotel.

Q. Where in the hotel did you see Lepke? A. I had a room there.

Q. When Lepke came in, what did he say to you? A. "Why did you come back?" I said, "I can't stay there. Danny was in different places. I didn't have anybody to talk to. I was very lonesome and I came back."

Q. When you were up in Saratoga, did Danny have a girl friend?

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Mr. Barshay: I object to it. Is that our^s fault, too?

The Court: Overruled.

Mr. Barshay: Exception, sir.

A. He did.

Q. Did you tell that to Lepke? A. I did.

Mr. Barshay: Object to it.

The Court: Overruled.

Mr. Barshay: Exception, sir.

4157

Q. When you told him your reason for coming back, what did Lepke say to you? A. He said I should stay in the Hatfield. He wanted to send me away again, but in the meantime I should stay there and out of sight of everybody in the clothing industry.

Q. Did he say why he wanted to send you away? A. Yes, he told me things were getting too hot.

Q. Where? A. That Brooklyn was not straightened out yet, and that the Dewey investigation is closing in on everybody.

4158

Q. Did you stay at the Hatfield, as you were told? A. I did.

Q. Did Lepke get in touch with you? A. Sometime—I went away for a few days, I believe—there was one about—when I came back from Saratoga Springs I met Lepke again and he told me to meet him down at Willie Albert's office.

Q. Who was Willie Alberts? Just tell me his occupation. A. He dealt in bail bonds.

Q. Did he have a connection with Lepke?

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Mr. Barshay: I object to it, sir, did he have a connection with Lepke.

The Court: Calls for a conclusion. Sustained.

Q. Do you know what his relationship was with Lepke?

Mr. Barshay: Same objection.

The Court: Sustained.

Q. Did you have a conversation with Lepke in which the name of Willie Alberts was mentioned? A. He told me to go down to the office.

4160

Q. Where was Willie Alberts' office? A. 2 Lafayette Street.

Q. Manhattan? A. Manhattan.

Q. Did you go there? A. I did.

Q. Did you meet Lepke at Willie Alberts' office? A. I did.

Mr. Barshay: Fix the time, Mr. Turkus, please.

4161

Q. This man Feinberg, what connection did he have with Local 240? A. Secretary-treasurer.

Q. Local 240? A. That is right.

Q. You described an individual as Sam Sneaky Levine. What was his connection with Local 240, Clothing Drivers and Helpers Union? A. He was the president of the Local, and ex-business agent.

Q. Who is Louis Plotkin in connection with his relationship to Local 240? A. He worked on the trucks and was also the president of the executive board.

4162

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Q. And Davey Kantor, what his connection?

A. Member of the executive board and worked on the truck.

Q. Tell the jury what Lepke said to you in Willie Alberts' office at that meeting.

Mr. Barshay: May we fix the time, Mr. Turkus, please?

4163

Q. Fix the time, to the best of your recollection. A. When I came back from Saratoga Springs, I should say anywhere between the middle of October and October 30th. I should say about the 17th, 18th, 20th, something like that, 22nd. Put it in that period.

Q. Now, you fixed the time and the place. Tell us the conversation that Lepke had with you.

Mr. Rosenthal: I make the same objection as I urged heretofore.

Mr. Talley: Same objection, if your Honor pleases.

The Court: Overruled.

4164

Defendants' Counsel: Exception.

A. I think, Mr. Turkus, that Willie Alberts started the conversation.

Q. All right, tell us what was said.

Mr. Barshay: I object to anything Willie Alberts said as not binding on this defendant.

Mr. Talley: The same objection for Weiss.

The Court: Only as to what Alberts

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said in the conversation where Lepke attended.

Mr. Turkus: Yes, that is what I am talking about.

The Court: Not any part where Lepke may not have been there or was out of hearing. Please restrict it accordingly. Otherwise, overruled.

Mr. Barshay: Exception.

Mr. Talley: Exception.

4166

Q. Will you relate what Willie Alberts said to you and Lepke and what was said in return?

A. He said the police were looking for Louis Plotkin, Sam Levine, Davey Kantor and Jeff Feinberg, and I said, "What for? What do they want them for?" and he said—

Q. When you say "he"— A. Willie Alberts said that they were in the store and they spent some money and the police want to question them about that, and Lepke said I should take them out of town. I said, "You cannot take them out of town. They work on trucks, and Feinberg is in the office." He says, "Well, take them at least for the week-end, anyhow." And so I got in touch with them—

4167

Q. Did you agree to do it, take them out for a week-end? A. I did.

Q. Did you get in touch with those individuals, Plotkin, Levine, Kantor and Feinberg? A. I did, through Davey Kantor.

Q. Did you take them out of town over the week-end? A. I did.

Q. Where did you go that week-end, you personally? You agreed to take those men out for the week-end, as you have told us. Where did

4168

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you go? A. I told Davey Kantor that I would meet him:—

Mr. Barshay: I object to anything he said to Mr. Kantor, sir. Now the defendant is not present.

Mr. Turkuš: Pursuant to an instruction.

The Court: Overruled.

Mr. Barshay: Exception.

4169

Q. Continue what you told Kantor. A. I told Kantor I would meet him at the Amerieus Hotel.

Q. Where is that? A. I am just trying to think of the name. The name escapes me. In Pennsylvania.

Q. Is it Allentown? A. In Allentown, the Amerieus Hotel.

Q. Did you meet Kantor, Plotkin, Levine and Feinberg in that hotel in Allentown? A. I did.

Q. Did you tell them that Lepke had wanted you to take them out for the week-end? A. Of course, not.

4170

Q. Did you return to New York City after that week-end there? A. I did.

Q. Do you recall where you went to stop after you returned from the week-end? A. At the Shelton, I believe.

Q. The Shelton, is that a hotel in Manhattan? A. A hotel, yes.

Q. Is that, to the best of your recollection, the place where you went? A. Yes, I either stopped at the Shelton or the Lexington as many times as I came in. I believe at that time I was at the Shelton.

Q. Did you continue to go to Willie Alberts' place? A. I did.

Q. Did you see Lepke after that week-end with Levine and Plotkin, Kantor and Feinberg?

A. I did.

Q. Did you talk with them? A. I did.

Q. What did you say?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. I told him that I had taken them out and they are back, and he said to me, "Don't worry about them any more. You have got to go away again." I said, "What for this time?" He said, "Well, things are very, very hot, and you cannot stay around. Willie Alberts has a relation, a nephew, in Salt Lake City. I want you to go up there."

4172

Q. When he said "things were getting very hot", did he mention where they were getting very hot? A. New York.

Mr. Barshay: I then move to strike out the entire testimony with respect to that on the ground that it no longer has any bearing with respect to this case or instructions to anyone.

4173

Mr. Turkus: The conversation has not been completed.

The Court: Denied.

Mr. Barshay: Exception.

Q. Tell us everything that Lepke said about it getting hot. A. He said that the Dewey investigation is very, very hot and that Brooklyn is not yet straightened out.

4174

Max Rubin—For People—Direct

Q. Did I understand you to say he wanted you to go with Willie Alberts' relative in Salt Lake City? A. That is right.

Q. When he told you that, did you agree to go? A. Of course.

4175

Q. Was anything said, when you agreed to go, about communication? A. He told me that Willie would keep me informed of how matters are going on, how things are going on, in Brooklyn, how matters were going on in Manhattan, and that Willie would send me my money. I was getting \$50 a week.

Q. When he told you about receiving information as to what was going on and that you would get your money while you were away, through Willie Alberts, did he give you any instructions in preparation for your trip? A. I had some pictures up in the house. He told me to take whatever pictures I had up in the house and give them to Willie Alberts and if I had any money in the bank to take it out and Willie would bring it up to my wife.

4176

Q. What kind of pictures did you have around the house at that time? A. I had a motion picture camera.

Q. Did you obey Lepke's instructions with regard to the pictures? A. I did. I took Willie Alberts up the house and he took the pictures.

Q. And what did you do with the pictures? A. I gave them to Willie Alberts.

The Court: Pictures of what?

The Witness: Myself, my wife and child, sights.

Max Rubin—For People—Direct

4177

Q. Did you eventually go to Salt Lake City; yes or no? A. I did.

Q. Before you left for Salt Lake City, did you go to a lawyer's office? A. I did.

Q. Who was the lawyer you went to see? A. Edward Maguire, of Rice and Maguire.

Q. Where are the offices of Rice and Maguire? A. On 42nd Street and Lexington Avenue.

Q. Was Mr. Maguire a labor lawyer? A. Primarily.

Q. And was he at that time representing Local 240? A. He was. 4178

Q. Did you have a talk?

Mr. Barshay: May we have the date, please?

A. In the late 20's, in the 20's of October, 1936.

Mr. Turkus: That is in response to Mr. Barshay's question.

Q. Did you have a talk with Mr. Edward Maguire? A. I did. 4179

Q. What did you say to Mr. Maguire?

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Your Honor, he goes there of his own volition now. He is talking now to his lawyer.

The Court: I misunderstood. Read the last page.

(Questions and answers read by the reporter.)

4180

Max Rubin—For People—Direct

The Court: Sustained. I was under the impression that he was sent there by Lepke.

Q. Did you have a talk, yes or no, with Mr. Maguire of the law firm? A. I did.

Q. Were you then a union official? A. I was.

Q. After you spoke with Mr. Maguire, where did you go, or whom did you see? A. I went to see Lepke.

4181

Q. Did you talk with Lepke about Maguire?

A. I did.

Q. What did you say to Lepke? A. That Maguire would like to see him.

Q. Did Lepke at that time know that Maguire was representing the local?

Mr. Barshay: I object to it.

The Court: Calls for a conclusion. Sustained.

Q. Did you tell him who Maguire was? A. I did.

4182

Q. What did you tell Lepke as to Maguire?

A. That Maguire wants to see him.

Q. Did you go with Lepke to Mr. Maguire's law office? A. I did.

Q. Did you have a talk with Mr. Maguire and Mr. Lepke? A. I did.

Q. What did you say to Maguire, what did he say to you, and what was the entire discussion in Mr. Maguire's office?

Mr. Rosenthal: I urge the same objection as far as the defendant Capone, in no wise binding on him.

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4183

Mr. Talley: Same objection as to the defendant Weiss.

The Court: Overruled.

Mr. Rosenthal: Exception.

Mr. Talley: Exception.

A. I said to him, "Mr. Maguire, will you repeat to Lepke what you told me yesterday?", and he said he would.

Q. Did he repeat? A. He did.

Q. What did he say?

4184

Mr. Talley: Objected to.

The Court: Overruled.

Mr. Talley: Exception.

A. He said it was inadvisable for me to leave the city, that as a union man it was not advisable; as a married man it was foolish; that eventually I would have to come back anyhow, and that I should stay in the city and face whatever I have to face because I cannot stay away, and I would lose my job if I stayed away any length of time.

4185

Q. Did Mr. Maguire say anything about flight in that talk? A. Yes.

Q. What did he say about flight? A. He said it would be a suspicion of guilt, it would be a sign to any jury that I ran away because I was guilty of something, and I should stay.

Q. When Mr. Maguire had repeated the advice that he had given you when you were along with him, what did Lepke say? A. Lepke said, "All I know, that when a witness is not around, there cannot be a case."

4186

Max Rubin—For People—Direct

Q. After Lepke said, "When there is no witness around there cannot be a case," did Mr.—

Mr. Barshay: He say, "A witness", please, Mr. Turkus.

Mr. Turkus: Withdrawn.

4187

Q. When Lepke said that to Mr. Maguire and to you, what did Mr. Maguire say? A. Mr. Maguire said, "Don't forget he is a married man, he has a family. It is no good for him to be away. No family man should be away. It is not right." He pleaded with him that I should stay.

Q. And what did Lepke say? A. "I will see about it."

Q. Did that break up the meeting with Mr. Maguire and Lepke? A. It did.

Q. Did you leave Mr. Maguire's law offices with Lepke? A. I did.

Q. Did Mr. Maguire remain in his office then? A. He did.

4188

Q. After you left Mr. Maguire's presence, did Lepke talk to you? A. He did.

Q. What did he say? A. In the hall, outside of Maguire's office, he says, "I didn't want to tell you this in front of Maguire but you have nothing to worry about. That case in Brooklyn is going to be thrown out the window. McCarthy is not going to take care of it any more and Jacobs is going to come in and Jacobs is going to be pushed in something else in another building and the case will die."

Q. Did he say anything else? A. That is all.

Q. After that, did you agree to leave and go to Salt Lake City? A. I did.

Q. Did you go to Salt Lake City? A. I did.

Q. Do you remember when you left for Salt Lake City? A. I think it was October 30, 1936.

Q. What hotel did you stop at in Salt Lake City? A. The Carlton.

Q. Have you seen photostatic copies of certain documents that were secured by the District Attorney in Salt Lake City? A. I did.

Q. And were those papers submitted to you for the refreshment of your recollection? A. They were.

Q. What hotel did you stop at in Salt Lake City? A. The Carlton.

Q. Under what name? A. George Miller.

Q. How long did you stay in Salt Lake City? A. One month.

Q. After you got to Salt Lake City, did you get sick? A. Yes, when I got off the train I got sick.

Q. And did you have a doctor? A. I had a doctor.

4191

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Did you go to a hospital? A. I did.

Mr. Barshay: Same objection, sir.

The Court: Overruled.

Mr. Barshay: I take exception.

Q. What was the hospital you were taken to?

A. The All Saints Hospital.

Q. In Salt Lake City? A. Yes, sir.

4192

Max Rubin—For People—Direct

Q. Is the full name Dr. N. H. Groves Latter Day Saints Hospital? A. That is it.

Q. Under what name were you admitted to the hospital? A. George Miller.

Q. How long did you stay in the hospital? A. Three days, I believe.

Q. Have you seen photostatic copies of the hospital records?

Mr. Barshay: I object to it.

4193

Q. In the District Attorney's office?

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. While you were in Salt Lake City, did you receive communications? A. I received three letters.

Q. Whom did you receive the letters from? A. Willie Alberts.

4194

Mr. Barshay: I object to it and move to strike out the answer.

Mr. Turkus: This is absolutely admissible, Lepke having told him that Willie Alberts—

Mr. Barshay: Now, please, Mr. Turkus.

Mr. Turkus: Your Honor, I desire to address you on a point of law without being hampered by any counsel.

The Court: The only question is the authentication of the signatures. The other legal point is in your favor. Sustained.

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4195

Q. Had you frequented Willie Alberts' bail bond place?

Mr. Barshay: Already answered, sir.

Q. Did you know Willie Alberts' handwriting?

Mr. Cuff: Object to that, calling for a conclusion.

A. No.

4196

The Court: He says he did not.

Mr. Cuff: I did not hear the answer.

Mr. Turkus: It is not a conclusion now.

Q. Never mind what was in the letters. Did you receive money?

Mr. Barshay: I object to it.

A. I did.

The Court: Overruled.

Mr. Barshay: Exception.

4197

The Court: Any money?

The Witness: I did, yes, sir.

The Court: With the letters?

The Witness: With the three letters.

Q. How often did you receive money?

Mr. Barshay: I move to strike out the answer, the first answer, and I object to this question.

The Court: Overruled.

4198

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Mr. Barshay: Exception.

A. I received money four times.

Q. Do you remember in what form you received the money?

Mr. Barshay: Same objection, sir.

The Court: Overruled.

Mr. Barshay: Exception.

4199

A. The three letters had fifty dollar bills in each and the fourth time I received money through a money order sent through the Western Union.

Mr. Turkus: I ask that this be marked for identification.

(Paper marked People's Exhibit Z-3 for identification.)

Q. Who was Sam Teitelbaum? A. Nephew of Willie Alberts. He used that name. That was not his right name.

4200

Mr. Barshay: I object to it and move to strike out the answer.

The Court: Does he know the relationship? Sustained. Strike it out.

Q. Where was this Sam Teitelbaum at the time you were in Salt Lake City?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

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4201

The Court: Do you know?

The Witness: Yes, surely. He had a florist establishment there. I went there.

Q Wasn't that the place that Lepke told you to go? A. He told me that Willie Alberts would send me to a nephew of his and that is where I went.

Mr. Barshay: I move to strike it out.

The Court: Is that the place?

The Witness: Yes.

4202

Mr. Barshay: I move to strike out the answer as not responsive.

The Court: I thought it was. Let it stand.

Mr. Barshay: Exception.

The Court: We will take a recess now. Everybody kindly remain in order, the witness going out first.

Gentlemen of the jury, do not discuss the case, let nobody talk to you about it, keep your minds open and follow all the previous admonitions. We will resume at ten o'clock on Monday morning. Let the jury pass out.

4203

(Thereupon an adjournment was taken to Monday, November 3, 1941, at ten a. m.)

4204

Max Rubin—For People—Direct

Brooklyn, N. Y., November 3, 1941.

TRIAL RESUMED

MAX RUBIN, a witness called in behalf of the People, resumed the stand and testified further as follows:

Direct examination by Mr. Turkus (continued):

4205

Q. Prior to recess on Friday you were testifying, among other things, that you were told to turn over certain pictures, you were told by Lepke to turn them over to Willie Alberts, and also to clean out a bank account? A. Yes, sir.

Q. At that time did you have a bank account? A. I did.

Q. In what bank did you have your account? A. The Bank for Savings, on 4th Avenue.

Q. Did you have money in that bank account? A. I did.

4206

Mr. Turkus: I ask that these papers be marked for identification—the two papers pinned together.

(Received and marked People's Exhibit Z-4 for identification.)

Mr. Turkus: I offer in evidence People's Exhibit Z-4 for identification, the same being a photostatic copy of bank account.

Mr. Barshay: Objected to as incompetent, immaterial and irrelevant, self-serving.

Max Rubin—For People—Direct

4207

The Court: Objection overruled.

Mr. Barshay: Exception.

(Received and marked People's Exhibit 35 in evidence.)

Mr. Rosenthal: May I have an exception also on behalf of the defendant Capone, as not binding?

Mr. Cuff: I understand we all have exceptions.

The Court: Yes.

4208

Mr. Turkus: May I read People's Exhibit 35 in evidence to the jury?

The Court: Yes.

Mr. Barshay: I object. What has that got to do with it? I object to the reading of this exhibit to the jury, or any part of it.

The Court: Do you mean that when an exhibit goes into evidence, the jury cannot see it?

Mr. Barshay: I did not say that.

The Court: I have overruled your objection.

4209

Mr. Barshay: Exception.

Mr. Turkus: (reading to jury) People's Exhibit 35 consists of two pieces of paper, "No. 1,395,354, July"—"Jul—1 1935" Alongside a dollar sign and the figures "2500." "I hereby agree to be bound by the conditions printed on the reverse side hereof."

The signature is "Max Rubin" in handwriting, and in typewriting it is, "RUBIN, Max".

4210

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I am reading the left-hand column: 1,395,354.

Reading under the column 1,395,354: "80 Van Cortlandt Pk. South, Bx. Business Agent."

Opposite "80 Van Cortlandt Pk." is "Residence," and opposite "Business Agent" is "Occupation."

"Harry" is opposite "Father's full name," and "Yetta Rothbard-d. Mother's full maiden name."

4211

A stamp across the face of that says: "Closed, Oct. 21, 1935."

The other portion of the exhibit reads, small number "4"—underneath are the figures "1,395,354."

Typewritten: "MAX RUBIN."

"The Bank for Savings in the City of New York."

These figures will appear under four columns: "Date," "Drafts," "Balance," "Deposits." "1935, July 1, Balance \$2,500, Deposits \$2,500."

4212

In the right-hand column: "\$15.62."

Underneath "Balance," "2,515.62."

Underneath "Deposits," it says "15.62."

"Oct. 11, Drafts, \$450; Balance, \$2,065.62." Over on the right-hand column is "10.32."

"Dec. 7, Drafts, 1,500." Underneath "Balance, 565.62." Right-hand side, small lead-pencil figures, "2.82." Dec. 7, 1936.

"Jan'y 1, Int." Under "Balance, 568.44. Deposits, 2.82. L. 2.84."

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4213

"Mar. 2, 578.44," under "Balance." Under "Deposits, 10." Alongside of that in small figures: "2.85."

"April 1, Int." Under "Balance, 581.29. Deposits, 2.85." Alongside of that in small figures, "2.90."

"July 7, Int." Underneath "Balance, 584.19. Deposits, 2.90." And in the right-hand column "2.92."

"Oct. 21, Drafts, 587.11." Underneath is written, "2,537.11." Underneath "Deposits," "2,537.11."

4214

Q. Now, did you on October 21, 1936—

The Court: There was a final withdrawal?

Mr. Turkus: \$587.11, which closed out the account.

I want to make a correction in my reading from the first exhibit. The account was closed out October 21, 1936.

Q. Pursuant to that instruction of Lepke's to close out your account in the Bank for Savings in the City of New York—

4215

Mr. Barshay: I object, first on the ground it is repetitious.

The Court: It is repetitious, sustained.

Q. Before recess Friday you told us that you arrived in Salt Lake City, and upon your arrival you were sick and went to the hospital which you described as Dr. N. H. Groves' Latter

4216

Max Rubin—For People—Direct

Day Saints Hospital, am I correct? A. Yes, sir, that is correct.

Q. And that you went there under the name that you were using, George Miller? A. That is correct.

Mr. Turkus: I offer a photostatic copy of a hospital record for identification. I ask that it be marked as one exhibit—consisting of 11 pages.

4217

(Received and marked People's Exhibit Z-5 for identification.)

The Court: Are they certified?

Mr. Turkus: Only photostats.

Q. When you went into the hospital, Mr. Rubin, I direct your attention to People's Exhibit Z-5 for identification and ask you whether upon admission to the hospital you signed the name of George Miller as the signature for the patient.

4218

Mr. Barshay: I object to that as not binding upon this defendant.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

Q. Is that the signature you wrote, appearing on People's Exhibit Z-5 for identification, the one that you just laid down? A. Yes, sir, I did.

Mr. Turkus: I am going to offer in evidence at this time so much of People's

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4219

Exhibit Z-5 for identification as contains the signature of "George Miller," identified by the witness as having been subscribed by him upon his admission to the hospital.

Mr. Barshay: Objected to as incompetent, immaterial and irrelevant, not binding in any fashion on this defendant.

The Court: Hospital records will have to come under the provision of the Civil Practice Act which requires certification. This is not certified. Also, if I recall correctly, it would have to be a record, a public record in this State. I am not clear on the latter point. We will come to that. But on the question of signature, that is not admissible unless for the purpose of proving by outside evidence that that is his signature. That has not yet been done. The rest of the paper is incompetent, in so far as it relates to hearsay matter, which was obviously stated by the patient at the time of his entry into the hospital. Objection sustained.

4220

4221

Q. Without reference to the patient's admission record, can you, without reference to that record for refreshment of your recollection, can you tell me the date you entered Dr. N. H. Groves Latter Day Saints Hospital in Salt Lake City? A. I believe it was November 2, 1936, perhaps November 3rd.

Q. I believe you just stated it was—

Mr. Barshay: I object to counsel re-

4222

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peating testimony of this witness just given a few minutes ago.

The Court: Reframe your question.

Q. Will you look at People's Exhibit Z-5 for identification and say if you can give us the exact date. A. November 3, 1936.

Q. Do you recall what address you gave in the hospital as your place of residence?

4223

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I do.

Q. What address? A. The Carlton Hotel.

Q. Do you recall, without refreshing your recollection from People's Exhibit Z-5 for identification, who you listed as your relative or friend, and the address you gave?

4224

Mr. Barshay: I object. May I direct your Honor's attention that Mr. Rosenthal sought to introduce letters in evidence, when your Honor sustained objection, and he tried to read contents of those letters under objection by Mr. Turkus.

The Court: You cannot read, therefore you cannot refresh his recollection from memoranda which he himself did not make, but if he recalls independently who it was, he can so state.

Mr. Turkus: I am asking him that.

A. Sam Teitelbaum.

Q. Do you remember what address you gave

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4225

of Sam Teitelbaum's? A. Broadway—I don't remember the address any more.

Q. Was that the Sam Teitelbaum that Lepke had sent you out to stay with?

Mr. Barshay: I object. There is no such testimony, that Sam Teitelbaum who is alleged to have been mentioned by the defendant is the same person he mentioned.

The Court: Objection overruled.

4226

Mr. Barshay: Exception. There is no proof that Mr. Buchalter ever saw Sam Teitelbaum, so he may not have been speaking about the same man.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes.

Q. Did this Sam Teitelbaum have a florist shop, as you were told before you went out to Salt Lake City?

Mr. Barshay: Objected to as not binding on the defendant.

4227

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

Q. Did you spend time in Sam Teitelbaum's florist shop, as you had been instructed to do?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

4228

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Q. Before recess on Friday, you told us you did receive money and you did receive information, didn't you?

Mr. Barshay: Objected to as repetitions.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

4229

Q. Will you look at People's Exhibit Z-3 for identification and tell us whether this was the Western Union money order, rather, a photostat of it, which you received out in Salt Lake City?

Mr. Barshay: I object to the characterization of Mr. Turkus's question.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I don't want to look at it, because I did not receive it.

4230

Q. Did you at any time ever see People's Exhibit Z-3 for identification after you came back?

A. I saw it, yes, sir.

Q. When, after you came back, did you see it for the first time, if you can recall? A. A month or two months ago; something like that.

Q. Can you identify this man (indicating)?

A. I can.

Q. Who is he?

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

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4231

A. (Referring to man who enters room) His name is Murray Weinstein.

Mr. Turkus: (Addressing man) Will you kindly give your name and address to the stenographer?

Person Addressed: Murray Weinstein, 1731 Harrison Avenue, Bronx.

Mr. Barshay: May we have this witness available, if he is under subpoena?

The Court: Are you going to call him again?

4232

Mr. Turkus: He is under subpoena.

The Court: All right.

Mr. Turkus: Mr. Barshay, if he needs him, knows he can exercise the service of a subpoena. Let us have that understood.

Is that man out of the room? (referring to Mr. Weinstein)

The Court Attendant: Yes.

Q. Is that the Murray Weinstein concerning whom you testified on Friday? A. He is.

Q. A union official? A. That is right.

4233

Mr. Barshay: May Mr. Turkus and I come up to see you for a minute?

The Court: Yes.

(Mr. Turkus and Mr. Barshay confer with the Court privately, without the hearing of the jury.)

(Respective counsel return to their places in the court-room.)

4234

Max Rubin—For People—Direct

By Mr. Turkus:

Q. Before you went to Salt Lake City, Mr. Rubin, did you tell your wife where you were going?

Mr. Barshay: I object.

The Court: Sustained as hearsay.

Mr. Turkus: May I argue that point?

I will pursue some other question, and then maybe the relevancy will be apparent.

4235

Q. Did you tell anybody other than Lepke and Albert where you were going in Salt Lake City?

Mr. Barshay: Same objection.

The Court: Just yes or no. Objection overruled.

Mr. Parshay: Exception.

A. No.

Q. On Friday you spoke of a Cutters Union, or Local 4, Cutters Local 4, do you recall? A. Yes, sir.

4236

Q. Affiliated with the Amalgamated Clothing Workers of America? A. Yes, sir.

Q. So that the jury may understand what a Cutters Local is, will you explain the set-up of the Cutters Local in connection with the Amalgamated? A. The piece goods make up clothing for men and boys goes into the cutting floor after it has been sponged. The sponger shrinks the garment as much as he possibly can so no shortage develops afterwards. Then it is put on a table, stretched out by stretchers, or layers,

or pullers, who cut it a specific length, and then if he has a required height, 20, 30, 40, and in the cheaper houses, 60 high, a marker comes along with a pattern and puts the pattern on the cloth, and then, with a piece of chalk, outlines these patterns, and then the main cutter comes along and cuts the garments out, and then the fitter comes along and chalks up the respective parts of the fit in the garment. Each one has a chalk number on, so you can relate different parts to one another, the under sleeve, the top sleeve, etc. Then the bundles are made and go to the tailor shop by the express route that I represented. And in the tailor shop the tailor takes each individual garment and makes it up. The cutter is the hub, the heart, the soul of the make of the garment.

4238

You know, you need about 2,000 cutters and about 20 to 25 thousand tailors, that is the center of that particular organization.

Q. As you have outlined the various steps each of these departments function in connection with the manufacture of a suit or garment, there are separate locals, aren't there? For example, you have the Cutters Local, you have the Tailors Local—you had better explain, so the jury will understand. A. The Cutters Local represents about 1,800 or 2,000 men, as I said before. Then there are the canvas men, the canvas that goes inside of the garment to give it body, the lapel makers—a special art—and the button-hole makers—a special union. Then there are the operators that make the complete garment, so that in a coat there are four or five—there are four or five or six different organizations that

4239

4240

Max Rubin—For People—Direct

take care of that particular work; and then there are the vest workers, who have their own local, and then there are the pants makers. The knee pants have a local of their own, and the long pants have a local of their own.

Q. As you state, the hub of the whole thing is the cutters? A. Positively.

Q. Did you tell us on Friday how long you stayed in Salt Lake City? A. I stood there one month.

4241

Q. During that entire month where did you live? A. I lived at the Carlton Hotel.

Q. Where did you spend your days? A. In the flower shop.

Q. With whom? A. With Sam Teitelbaum, in his shop.

Q. After you had stayed that month, where did you go? A. I came back to New York.

Q. Did you contact anyone before you returned to New York City?

4242

Mr. Barshay: Objected to as not binding on the defendant.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did not.

Q. When you returned to New York City where did you go? A. I stopped I believe at the Shelton.

Q. In Manhattan? A. In Manhattan.

Q. When you got back to Manhattan did you communicate with anyone? A. I did.

Q. With whom? A. With Lapke.

Q. Did you meet him? A. I did.

Q. Where did you meet him? A. My best recollection is in Willie Albert's office.

Q. At No. 2 Lafayette Street, Manhattan, is that the best of your recollection? A. Yes, sir, that is right.

Q. Did you have a talk with Lepke? A. Yes, sir, I did.

Q. Tell us what he said to you and what you said to him. A. He asked me why I came back. I said "I could not stay there, it is too lonesome; I did not see my family; that I am a home man; I wanted to stay home." He asked me if I had anything in the back of my head that brings me back. I said, "No," I had not anything in the back of my head, that I considered him a friend of mine and I had no notions of any kind. Then he said that things are very hot—"Brooklyn is not straightened out. Investigations are getting very serious," and that I had no right to come back.

4244

Q. After he told you you had no right to come back, was anything further discussed? A. I told him he had nothing to worry about as far as I was concerned, that I was a friend.

4245

Q. Did you continue to stay at the hotel in Manhattan? A. I did.

Q. All during this period that you were away in Salt Lake City did you have any contact with your wife and family?

Mr. Barshay: I object to that.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Not while I was in Salt Lake City, no, sir.

4246

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Q. Or with any relative or member of your family? A. No, sir, no one.

Q. Did you obey the instructions you received prior to going to Salt Lake City and when you were there?

Mr. Barshay: Objected to as a conclusion.

The Court: Objection overruled.

Mr. Barshay: Exception.

4247

A. I did.

Q. How long did you continue to stay in this Manhattan hotel, if you can remember? A. Until some part of December; I think it was the early part of December.

Q. Did Lepke, at or about that time, have a talk with you about going away? A. He did.

Mr. Barshay: I object to counsel leading.

The Court: Objection sustained.

4248

Mr. Turkus: I ask that this paper be marked for identification.

(Received and marked People's Exhibit Z-6 for identification.)

Q. After you had stayed in this hotel for the period of time you have related to the jury, did you have a talk with Lepke? A. Yes, sir.

Q. Who spoke first, if you can remember? A. Lepke told me I would have to go away again.

Q. When he told you you would have to go away, what did you say to him? A. I did not

want to go. I said, "I am better off staying in the city."

Q. What did he say to you? A. He said to me, "you are complaining you are lonesome, you have nothing to do, I will send you to a place where you will be occupied; you will make some money besides. I want you to go to New Orleans. Frank Costello is up there, and he is running the machines—all kinds of slot machines. You go around and help with the machines and you will be occupied. You will have money from New York, money from me, money from there. You will have nothing to worry about. You will be O. K."

4250

Q. Did you agree to go? A. I did.

Q. Did you go to New Orleans? A. I did.

Q. Before you went to New Orleans did you get any instructions from Lepke about communication?

Mr. Barshay: I object to the form of the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

4251

A. I did.

Q. What were the instructions you received?

A. That as soon as I got there I should notify Paul Berger, where I was stopping.

Q. You say you did go to New Orleans? A. Yes, sir.

Q. Do you recall what hotel in New Orleans you went to? A. Yes, sir, the Hotel New Orleans.

4252

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Q. Have you seen a photostatic copy of the registration of that hotel? A. I did.

Q. Look at People's Exhibit Z-6 for identification and tell us if you can identify it. A. Yes, sir.

Q. Is that your registration in the Hotel New Orleans? A. It is.

Q. Under the name you used? A. Yes, sir.

4253

Mr. Turkus: I offer that in evidence.

The Court: What is the date?

Mr. Turkus: The date stamped on it is December 9, 1936, at 9:56 P. M.

Q. (The Court) Does that refresh your recollection, December 9, 1936? A. Yes, sir.

Mr. Barshay: The same objection as before.

The Court: Objection overruled.

Mr. Barshay: Exception.

4254

(Received and marked People's Exhibit 36 in evidence.)

Mr. Turkus: May I read People's Exhibit 36 to the jury?

The Court: Yes.

Mr. Turkus: This is a photostatic copy of a card—

The Court: I thought that was an original.

Mr. Turkus: No, it is a photostat.

(continuing reading) "Welcome to Hotel New Orleans." A large black line under "New Orleans."

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"New Orleans' Newest and Most Modern Hotel. Guests are hereby notified that the Company will not be responsible for valuables, Money, Jewelry, Clothing, etc.; unless same are deposited in the safe. Nor will we be responsible for Automobiles, Tires, or other property left in parking space."

Registration "11497"

"Room No. 1016. Rate \$2.50. Room Clerk, B." "Baggage" has a check on it—maybe the figure "1"—you can examine it. "Typist: G." "Account Number 26193."

4256

"Arrival," stamped: "Hotel New Orleans, Dec. 9, 9:56 P. M. 1936."

"Name: William Harris."

"City: Phila" — meaning "Philadelphia."

"State: Pa." meaning "Pennsylvania."

Q. Did you register under the name of "William Harris"? A. I did.

Q. Did you use the address, "Philadelphia, Pennsylvania"? A. I did.

4257

Q. In regard to instructions you received from Lepke, to communicate with Berger, did you follow out that instruction and communicate with Berger? A. I did.

Q. Did you tell Berger what hotel you were stopping at? A. I did.

Q. Did you tell him what name you were using? A. I did.

Q. How long did you stay in New Orleans? A. One week.

Q. During the week you were in New Orleans,

4258

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did you contact or communicate with your wife or any member of your family? A. I did not.

Q. Did you hear anything from your wife or any member of your family? A. I did not.

Q. After you had been in New Orleans a week, where did you go? A. I came back to New York.

Q. Before you came back to New York City did you talk or communicate with anybody? A. I did not.

4259

Q. Did you tell Berger you were coming back? A. I did not.

Q. Did you tell Lepke you were coming back? A. I did not.

Q. When you came back to New York City from New Orleans, where did you go? A. I went home.

Q. When you got home was your wife home?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

4260

A. She was not.

Q. Did you see her later?

Mr. Barshay: Objected to.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. Where? A. In my house.

Q. Did you see your son? A. I did.

Mr. Barshay: I make the same objection.

The Court: Same ruling.

Mr. Barshay: Exception.

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4261

Q. After that, did you communicate with anybody? A. I went to sleep. When I woke up I called up Paul Berger.

Q. After you called up Paul Berger, did you receive a visit from anybody? A. I received a visit from Paul Berger.

Q. Did he say something to you?

Mr. Barshay: Yes or no.

A. Yes, sir.

4262

Q. What did you say to him?

Mr. Barshay: I object. This is not pursuant to any instructions according to the witness's own testimony.

Mr. Turkus: It will be connected.

The Court: The trouble is, mischief may be done.

Mr. Turkus: I think your Honor can take my judgment when I say it will be connected, that it will be connected, within the next few minutes, right from the witness.

4263

Mr. Barshay: I do not take his judgment or anyone else's judgment on an issue.

The Court: The Court according to its notes understands the alleged instructions by Lepke were in regard to Paul Berger.

Mr. Turkus: To communicate with Paul Berger and let him know the address, that is all. There have been other instructions with regard to Paul Berger; if you will refer to Friday's testimony you will see what the significance of the

4264

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Berger contact is, and I represent to your Honor that it will be connected.

The Court: I thought most of the instructions to Paul Berger were by Belea.

Mr. Turkus: I do not want to go into any extended talk.

The Court: I will overrule the objection.

Mr. Barshay: Exception.

4265

Q. Will you relate to the Court and the jury what Berger said to you in your house? A. That Lepke is waiting for me, he wants to see me.

Q. Did you go somewhere with Berger? A. I did.

Q. At that time were you dressed, when Berger got there?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

4266

A. I got dressed.

Q. Did you leave your home with Berger?

Mr. Barshay: I object to counsel leading.

The Court: Objection sustained.

Q. Did you walk outside of your apartment or your home?

Mr. Barshay: Same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

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4267

Q. (The Court) Who went with you? A. Paul Berger.

Q. When you got downstairs was there a conveyance there?

Mr. Barshay: Objected to as leading.

The Court: Objection sustained. How did you go?

Q. What was there when you got downstairs? A. Paul Berger's car.

Q. Do you remember the condition of the weather then?

4268

Mr. Barshay: Same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I do.

Q. What was it? A. It was raining pitchforks; coming down in torrents.

Q. Did you go into Berger's car with him? A. I did.

Q. Who drove? A. Paul Berger.

4269

Q. Where did he drive? A. Amsterdam Avenue, 150th or 160th Street, I don't know exactly, but around that neighborhood.

Q. Did Berger stop the car? A. He did.

Q. When he stopped the car did you see somebody? A. Yes.

Q. Where was that "somebody" when you saw him? A. Under an awning.

Q. Who was it? A. Lepke.

Q. When you saw Lepke under the awning, what did you do? A. I walked over to him.

Q. Did he say anything to you? A. He did.

Q. What did he say? A. He wanted to know

4270

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why I came back. He told me he had something nice for me up there and why I came back—I would have been occupied, I would have been happy up there—I would have had plenty to do—why I came back. I told him I could not stay there, that I went to see two movies a day, and I just could not stay there.

Q. After you said that, did Lepke say something else to you? A. He did.

4271

Q. What did he say to you? A. He asked me how old I was.

Q. What did you say when he asked you how old you were? A. I said I was 48.

Q. Was that your right age? A. It was at that time.

Q. When you told Lepke you were 48, what did he say to you?

Mr. Barshay: I object to what Mr. Lepke said to him.

The Court: Objection overruled.

Mr. Barshay: Exception.

4272

A. He said it was a ripe age.

Mr. Barshay: I move to strike out the answer.

The Court: Motion denied.

Mr. Barshay: Exception. I move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied.

Mr. Barshay: Exception.

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4273

Q. After Lepke told you that was a ripe age—

Mr. Barshay: I object to counsel repeating the answer. The jury heard it and everybody else heard it.

The Court: Go ahead.

Mr. Barshay: May I have a ruling on my objection?

The Court: Objection overruled. Complete your question.

Mr. Barshay: Exception.

4274

Q (continuing)—what happened? A. I replied to him again that he had nothing to worry about me.

The Court: I don't like to disorganize the court—this is only for a few minutes, in order for the witness to take medicine. See that he is provided with water. You will remain in order, gentlemen.

(Witness leaves stand and returns in a few minutes.)

4275

Q. After you told Lepke he had nothing to worry about, what did he say? A. He told me to get in the car with him.

Q. What car? A. Paul Berger's car.

Q. Did you get in Paul Berger's car with Lepke? A. I did.

Q. When you got into the car what did Lepke say to Berger? A. Lepke told Berger to take me home. I should get my things, and pack, and get out of the house, immediately, and that Berger was to take me down to a hotel.

Q. Did Lepke then say where you were to go?

4276

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A. He told me he is going to send me out of town with a fellow who is a very good fellow—a fellow that has plenty of money and was good company, and I would be occupied, and I would be able to stay away, but that in the meantime I should stay in the hotel, I should not go home, I should not stay home.

Q. Where did he tell Berger to leave you? A. At the hotel; I usually stopped either at the Shelton or the Lexington.

4277

Q. Did Berger drive you home? A. He did.

Q. At any time during the trip to your house did Lepke exit from the car? A. He did.

Q. Do you remember where? A. Someplace on the way up.

Q. Now, when Berger drove you home, did he go upstairs with you? A. He did.

Q. Did you pack? A. He helped me pack, yes, sir.

Q. Did you say goodbye to your wife? A. I did.

4278

Q. And your boy? A. He was sleeping. I kissed him.

Q. Where did you go from the house? A. We drove down to the Lexington, and Paul Berger left me off there and took my two valises—I believe I had—and he drove away.

Q. When Berger left you off at the Lexington with the valises, did he drive off in his car? A. He did.

Q. Did you actually stop then at the Lexington? A. No, sir.

Q. Where did you stop? A. At the Shelton.

Q. Was that close by? A. One block.

Q. Do you recall how long you stopped there?

A. I think, with a slight interruption, until about the middle of January.

Q. Did you enter the Shelton after Berger had left you outside there? A. I entered the Lexington.

Q. Were you able to secure accommodations?

A. No, sir, they were crowded, overcrowded.

Q. Was it then you went to the other hotel?

A. Yes, sir; the door man carried my bags over to the Shelton.

Q. Had you been receiving money all this period of time? A. I had.

Q. Did you get money while you were at the hotel? A. I did.

Q. Who was bringing you the money? A. Paul Berger.

Q. Were arrangements made for you to go and see that man that Lepke spoke to you about when he was under the awning? A. Yes, sir, Lepke told me sometime in January, I believe it was before the 15th of January, that this fellow was going out with a fellow named Bartfield.

Q. What is Bartfield's full name? A. Irving Zenreith.

Q. Under what name was Zenreith known? A. Bartfield.

Q. Continue the conversation. I stopped you. A. This fellow did not like this Bartfield around with him, and I would be all right, and that he was stopping in the Americus Hotel in Philadelphia, Pennsylvania, and I should go there and I would meet him.

Q. Are you sure about the name of the hotel in which you met this individual that Lepke

4280

4281

4282

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told you to go away with on that occasion? A. I was there several times before.

Mr. Turkus: I ask to have this marked for identification.

(Received and marked People's Exhibit Z-7 for identification.)

4283

Q. Will you look at People's Exhibit Z-7 for identification and tell us if you can identify it? A. I can.

Q. What is it? A. My signature, Max Rubin.

Q. In what hotel? A. At the Americus—oh, the hotel—the Hotel Adelphi—I am sorry. The Americus is in Allentown.

Q. Did you meet this individual that Lepke spoke to you about under the awning on that occasion, at the Hotel Adelphi in Philadelphia? A. I did.

Q. Did you register in that hotel? A. I did.

Q. Under the name of Max Rubin? A. Yes, sir.

4284

Mr. Turkus: I offer in evidence People's Exhibit Z-7 for identification, the hotel registration record.

Mr. Barshay: I make the same objection as before.

The Court: The trouble with this is it is a photostat.

Mr. Turkus: Yes.

The Court: It is not identified as an original signature. For a copy to be admissible it must be certified as a public record.

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4285

Mr. Turkus: I will prove that.

The Court: I understood when the other hotel record was offered that it was an original, because it appeared to be.

Mr. Turkus: No, it was a photostat.

The Court: It did not look like a photostat.

Mr. Turkus: Do you want that exhibit withdrawn? Being you did not know it was a photostat.

The Court: Well, if there is any motion to that effect. But I cannot let this one in.

4286

Mr. Turkus: You can strike out or withdraw the other exhibit then.

Mr. Barshay: I direct your Honor's attention to the fact that it was given to the jury under my objection.

The Court: The Court has not forgotten that. The Court is ruling in your favor.

Mr. Turkus: This is Exhibit 32, the register at New Orleans.

4287

The Court: Strike that out, and the jury is instructed to disregard the exhibit because it is a photostat and was improperly admitted.

Q. Well, will People's Exhibit Z-7 for identification refresh your recollection as to the date that you met this individual in the Hotel Adelphi at Philadelphia—will that refresh your recollection as to the date? A. Yes, sir.

Q. Look at it for that purpose. A. It does.

4288

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Q. What is the date you met him? A. January 19th.

Q. And the year—1937? A. 1937, yes, sir.

Q. Did this man have an automobile?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. He did.

4289

Q. What state's license plates did this automobile bear?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Michigan.

Q. How long did you stay away with this man? A. About seven weeks.

4290

Q. Where did you go with him? A. We went south to St. Petersburg, Key West, one day in Miami—about seven weeks all together, traveling around.

Q. Before you went with this man did you receive any word about your money?

Mr. Barshay: Objected to unless it is connected with the defendant.

The Court: Objection overruled.

Mr. Barshay: Exception.

The Court: Yes or no.

A. Yes, sir.

Q. From whom did you receive word? A. From Lepke.

Q. What were you told about your money?

A. That this fellow would get money every week for me and give it to me.

Q. This man with the Michigan plates? A. Yes, sir.

Q. While you were on your seven-weeks trip, going through Miami and all these other places you have related to the jury, each and every week did you get your money? A. I did.

Q. How much? A. Fifty dollars

Q. And in what form did you receive this money? A. In cash.

Q. After about seven weeks on this trip, did you decide to return to New York City again?

A. I did.

Mr. Barshay: I object to the form of the question.

The Court: Sustained as to form.

Q. Did you say anything to the man with whom you were riding about returning to New York City?

Mr. Barshay: I make the same objection.

The Court: Objection overruled—yes or no.

Mr. Barshay: Exception.

A. Yes, sir.

Q. In all of those seven weeks' trip, as you have described it, to the best of your recollection

4294

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tion did you hear from your wife or child or any member of your family?

Mr. Barshay: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did not.

4295

Q. After you told this man about your intention to return to New York City, did you again see Lepke? A. I saw him in March, in Washington, D. C.

Q. Where in Washington, D. C. did you see Lepke? A. In a hotel room.

Q. Did you communicate with Lepke before you met him in the hotel? A. I did not.

Q. Did you know that Lepke was in Washington before he walked into your hotel room? A. I did not.

Q. When Lepke came into the hotel room in Washington, did he talk to you? A. He did.

4296

Q. What did he say to you? A. He wanted to know why I was coming back to New York City.

Q. And what did you say to him? A. I told him I was anxious to come back, I wanted to pay my income tax; I usually paid it in the Custom House, New York, and I was anxious to get back.

Q. When you told him you were anxious to get back to New York City, what did Lepke say to you? A. I cannot come back.

Q. When he told you that you could not come back, what did you say? A. I told him he had

nothing to worry about, and then I asked him to come into the bathroom with me and without the hearing of the others that were in the room.

Q. Was this man who had the Michigan plates on his car in the room with you when Lepke was telling you you could not come back? A. He and a brother of his.

Q. Then I understand you to say to the Court and jury you called Lepke into the bathroom?

A. Yes, sir.

Q. Out of the hearing of the two others? A. Yes, sir.

Q. What was said in the bathroom? A. I told him he had nothing to worry about, I was coming back to New York, if I got in any trouble he had nothing to worry about; if I had to pay any penalty of any kind I was willing to pay it; but as far as he was concerned he had nothing to worry about.

Q. Did you say anything to Lepke about this other man and your reason for calling him into the bathroom? A. Yes, sir.

Q. What did you say to Lepke about that? A. I told him that the reason I brought him in was I was afraid of this other fellow,—that he would give me permission to come back, and perhaps he did not want to give me permission, because this fellow was in the other room and wanted to come back too,—that I brought him in there for that purpose, out of earshot of everybody.

Q. When you made that explanation to Lepke did he say anything to you? A. He said to me, "If you get in any trouble in New York, don't come to me." I said, "What do you mean by trouble?" He said, "I mean if you need a law-

4300

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yer or need money to get up a bail bond or something, don't come to me for that." I said, "That is all right, I will stay on my own."

Mr. Barshay: I move to strike out the answer, with this inducement of flight, nothing to do with the case at issue by the witness's own testimony. He said, "Now, if you get in any trouble in New York"—

4301

The Court: Maybe because Brooklyn is technically a part of New York—

Mr. Turkus: That is what I want for the record.

The Court: Some people in other parts of the city don't want to know it.

Mr. Barshay: I object to the Court's remark.

The Court: Strike it out, and the jury will disregard it. Your motion to strike out the answer is denied.

Mr. Barshay: Exception.

4302

Q. Now, you have related to the Court and jury when, in substance, he told you if you went back you would be on your own—did he tell you where to go? A. He did.

Q. What did he say about where you should stop? A. He told me to stop at the Bossert.

Q. The Bossert Hotel? A. Yes, sir.

Q. In Brooklyn? A. Yes, sir.

Q. Did he say anything about the Bossert Hotel in Brooklyn when he told you to stop there? A. That it was a good place.

Q. Did you come back to New York City? A. I did.

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4303

Q. And pursuant to Lepke's instructions, did you go to the Hotel Bossert in Brooklyn? A. I did.

Q. Did you register at the Hotel Bossert? A. I did.

Q. Did you register there under your right or true name? A. I did not.

Mr. Turkus: I ask that this paper be marked for identification—this is an original.

4304

(Received and marked People's Exhibit Z-8 for identification.)

Q. I show you People's Exhibit Z-8 for identification and ask you if that is the original hotel registration card at the Hotel Bossert. A. It is.

Mr. Turkus: I offer it in evidence.

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

4305

(Received and marked People's Exhibit 37 in evidence.)

Mr. Turkus: May I read it to the jury?

The Court: Yes.

Mr. Turkus: (reading to jury) This is a registration card of the Hotel Bossert, Brooklyn: In figures, "116". In writing are the words "Louis Stein." "Date, Mar. 7—1937." Number blank. "Name: Louis Stein. Street: 210 E. 166th St."

4306

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“City and State: New York City.”

Then there is a notice to guests reading: “A safe is provided for the deposit of valuables. The Hotel will not be responsible for valuables not deposited therein.

“Apt. No. 1106. Rate \$3.00. Folio 561. Clerk, Karaioff.”

On the reverse side is a stamp: “Hotel Bossert, Mar. 7, 3:57 P. M., 1937—Front office.”

4307

Q. How long did you stay in the Hotel Bossert under the name of Louis Stein? A. I believe a day or two.

Q. Where did you go from there? A. I went to the home of the president of the union, Sammy Sneaky Levine.

Q. Sammy Sneaky Levine was president of what union? A. Local 240.

Q. The Clothing Drivers and Helpers Union? A. That is right.

4308

Q. While you were at the home of Sammy Sneaky Levine did you communicate with anybody? A. I did.

Q. With whom? A. I got Sam Levine to get Paul Berger for me.

Mr. Barshay: I object from this point on. If your Honor recalls, even according to his own testimony, the defendant said to him, “You are on your own,” and there are no further instructions from then on.

The Court: Sustained upon the ground

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4309

it calls for a conclusion as to what Berger did and as to what he did in relation to Berger.

Mr. Barshay: May I have an objection, or a ruling on the objection I raised?

The Court: You have all the rulings necessary. You have enough rulings. I sustain the objection.

Q. At any rate, while at the home of Sammy Sneaky Levine, did you see or meet with Paul Berger? 4310

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

Q. Did you continue to receive your money?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

4311

A. I did.

Q. From whom? A. Paul Berger.

Q. How much did you get?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I got \$50, and I got more money besides that.

Q. Tell us what you got. A. I got \$50, then

4312

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some accumulation, I believe, of some money—I don't remember now—but I believe I got some other money besides the \$50. I believe so.

Q. Did you get that money from Berger each and every week you were at Sam Sneaky Levine's house? A. Yes, sir.

Q. How long did you stay there? A. About three weeks.

Q. Where did you go from Sneaky Levine's house?

4313

Mr. Barshay: I make the same objection now; he is on his own, your Honor, according to his own testimony; it is not binding on the defendant.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I took an apartment on Flatbush Avenue.

Q. Where on Flatbush Avenue did you take an apartment, can you recall the number of that?

A. 532.

4314

Q. Now, before you had taken that apartment did you speak to Berger?

Mr. Barshay: I object.

The Court: Objection overruled. Answer yes or no.

Mr. Barshay: Exception.

A. Yes, sir.

Q. At the time you were living— Question withdrawn.

Q. When you met Berger, at the time you were living at Sammy Sneaky Levine's home, describe your appearance to the jury.

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4315

Mr. Barshay: I object to that as not binding on the defendant.

The Court: Objection overruled.

Mr. Barshay: Exemption.

A. I wore glasses, and I had a moustache; I let my hair—

Q. (interrupting) What kind of glasses did you wear? A. Regular glasses.

Q. And you say you wore a moustache? A. Yes, sir.

4316

Q. Had you ever worn a moustache before or since?

Mr. Barshay: ~~The same objection.~~

The Court: Objection overruled.

Mr. Barshay: Exemption.

Q. (continuing) During that period of time?

A. No, sir.

The Court: You started to say something else when you were interrupted.

The Witness: I wanted to say I let my hair grow long, too.

4317

Q. What about your hair? A. I let it grow longer than I usually have it.

Q. You told the Court and jury that you took an apartment at 532 Flatbush Avenue; is that correct? A. Yes, sir.

Q. Did you take an apartment under the name of Max Rubin? A. I did not.

Q. Under what name was the apartment taken? A. Harry Chernilow.

4318

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Q. Will you spell that, please? A. C-h-e-r-n-i-l-o-w.

Q. While living on Flatbush Avenue in Brooklyn under the name of Chernilow, did Paul Berger see you there?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

4319

A. At least once a week.

Q. Did you get your money at least once a week?

Mr. Barshay: The same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. (The Court:) From whom? A. From Paul Berger.

4320

Q. Now, all of this period of time when you were sent out of town by Lepke, was your wife receiving money? A. She was.

Q. What was the arrangement made about that?

Mr. Barshay: I object unless the defendant is connected.

The Court: Sustained. It calls for a conclusion.

Mr. Turkus: It is not a conclusion, because he had part in the arrangement.

Mr. Barshay: Prove it.

Mr. Turkus: I will, but I cannot prove it if the objection is sustained.

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4321

The Court: The question is improper in form.

Q. Tell us what you did to see that your wife got her money.

Mr. Barshay: I object to what he did. That is not binding on the defendant.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Before I took the Salt Lake City trip I wrote a letter to the union telling them I was separated from my wife and that I had made an arrangement with her to get \$60 a week, and that she should continue getting that \$60 every week while I was away.

4322

Mr. Barshay: I move to strike out what he wrote to the union.

The Court: Strike it out.

Q. Before you wrote the letter to the union did you have a talk with Lepke about your wife getting money?

4323

Mr. Barshay: Yes, or no.

A. Yes, sir.

Mr. Turkus: I ask that this book be marked for identification.

(Received and marked People's Exhibit Z-9 for identification.)

4324

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Q. As a matter of fact, was the discussion about your wife before and after you met in Maguire's office? A. Yes, sir.

Mr. Barshay: Objected to as leading.

4325

Q. Look at People's Exhibit Z-9 for identification and tell us if you can refresh your recollection from that and see if you wrote a letter saying your wife was to get the money. Read at the bottom of page 54. That may refresh your recollection. A. Yes, sir.

Q. When was it you wrote that letter? A. October 30, 1936.

Q. A letter to whom? A. To the union.

Mr. Turkus: Will you mark this specific check for identification?

(Received and marked People's Exhibit Z-10 for identification.)

4326

Q. I show you People's Exhibit Z-10 for identification and ask you if you can identify it. Look at the endorsement on the back. A. I can.

Q. Do you know your wife's handwriting? A. I do.

Q. Is that her signature on the back of People's Exhibit Z-10 for identification? A. It is.

Mr. Turkus: The check is offered in evidence.

Mr. Barshay: I object to it as not binding upon this defendant.

Mr. Turkus: That is part of the arrangement under which he went away.

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4327

The Court: He has not yet so testified.

Mr. Turkus: On Friday.

The Court: He said he had a talk with Lepke about it, but he did not say what the talk was.

Q. Will you tell the conversation which you had with Lepke about your wife getting money from the Clothing Drivers and Helpers Union while you were away?

4328

Mr. Barshay: May we have the time and place fixed?

The Court: Fix the time.

Mr. Turkus: That portion was played up on Friday.

Q. (The Court) Was that before you went to Salt Lake City?

Mr. Turkus: May I discuss the question without this bickering?

The Court: You may state the conversation on that point. Objection overruled.

4329

Mr. Barshay: We want to fix the time and place.

The Court: You are right.

Q. During the period of meeting Lepke at Willie Albert's office— A. That was up to the time I went away—it must have been, to the best of my recollection, in Willie Albert's office.

Q. What was the talk? A. He told me—on the question of cleaning out all the records and everything else, but in order that my wife should not be called before any Grand Jury or any of

4330

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those things, or it was to be known where I was, that the separation letter should be sent in.

Q. (The Court) The what? A. A letter that I am separated from my wife, and all that. I do not remember the exact wording of the matter, but now, to the best of my recollection, the fact I was separated from the wife, that I should go away.

4331

Mr. Barshay: I move to strike that out as not responsive to the question.

The Court: Motion denied.

Mr. Barshay: Exception.

Q. What was said about the arrangement for a check to go to your wife? A. That is the arrangement I made.

Q. After that talk? A. Yes, sir, after that talk.

4332

Mr. Barshay: I move to strike out the answer as not binding on this defendant, that is an arrangement that he made, and in the talk with Mr. Buchaiter there was absolutely no arrangement with respect to that phase.

The Witness: This is not a question of my own.

Mr. Turkus: May I point out exactly—

The Court: You do not have to argue.

By the Court:

Q. What was said with Lepke about the money to your wife—that is the question. A. He told me to make arrangements that she—

Q. With whom? A. With my wife, that she cannot be dragged into the Grand Jury and asked where I was, that I should make arrangements to sort of separate or appear as if I was separated from her.

Q. Was anything said to the union respecting the money—you did not answer that—to your wife? A. Those are the arrangements we made.

Q. Was anything said to Lepke about the union sending money to your wife? A. No, sir.

Mr. Barshay: I move to strike it out.

4334

The Court: The answer will stand, but the Court sustains the objection as to time.

By Mr. Turkus:

Q. Was it in pursuance of Lepke's instructions that your wife was to keep away from the Grand Jury that you wrote the letter to the Clothing Drivers & Helpers Union?

Mr. Barshay: I object, especially to that part which says she should be kept away from the Grand Jury. There is no proof any Grand Jury was seeking her.

4335

The Court: Objection overruled.

Mr. Barshay: Exception.

Mr. Turkus: That was to thwart the Grand Jury.

Mr. Barshay: I thought you did not want any bickering. A question of law can be proven in view of the basis now being laid, but it will have to be proven

4336

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in the proper way and not by stating a conclusion.

Q. I asked whether you wrote a letter.

The Court: He said he did.

Q. Pursuant to instructions?

4337

Mr. Barshay: I object to that question.

The Court: Maybe the ruling is not understood. Mr. Turkus, have you the original letter?

Mr. Turkus: I haven't it, no, sir.

The Court: Is there any possibility of proving it by secondary evidence, the contents of the letter?

Q. Will you look at Z-9 for identification, particularly the bottom of page 54 and the rest on 55, those are the minutes of the union.

4338

The Court: They are not authenticated.

Mr. Turkus: Look at it. I don't want to go into any discussion about a book not in evidence.

The Court: The point is, these minutes will have to be authenticated by the secretary.

Mr. Turkus: They are.

The Court: He has to be sworn on the witness stand, subject to cross-examination on this point.

Mr. Turkus: All I want to establish is

he got instructions from the defendant Lepke, whether he obeyed them, and in pursuance of the instructions sent a letter to the union.

The Court: The Court is trying to call attention to this: that under the rules of evidence you would be required to produce the letter from the union. If this is not produced, because it has disappeared or is out of jurisdiction, then you may prove it by your own witness, by parol testimony, the contents of that letter.

4340

Mr. Turkus: I first have to show there was such a letter in fact sent.

The Court: But as to the contents—

Mr. Turkus: I am not going into that now.

The Court: Then proceed.

Mr. Turkus: Read the last question, so that we can get an answer for the record.

(Pending question read by reporter.)

Mr. Barshay: I object to the form of the question.

4341

The Court: Part of it is objectionable as stating his conclusion.

By the Court:

Q. Did you, after that conversation with Lepke, write the letter to the union? A. I did.

Q. How long after? A. Anywheres between, I should say between the 21st and 30th of October. The letter was dated October 30th, that is

4342

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when the letter was dated; I met Feinberg and I gave him the letter.

By Mr. Turkus:

Q. Who was Feinberg? A. I knew him as Jeff. He is Louis Feinberg, the secretary-treasurer of the union.

4343

Q. At the time you wrote the letter had there been any disagreement at all between you and your wife?

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. There was none.

Q. Now, at that time, when you wrote the letter to the union, what office did you have in the union? A. Business agent.

4344

Q. Are you familiar with People's Exhibit Z-9 for identification—are you familiar with the book? A. Being an official of the union, I saw it very often.

Q. What is that book? A. It is a minute book of the local, kept a little haphazard, but still a minute book.

Q. Do you know in whose handwriting that minute book is, specifically, pages 54 and 55? A. Yes, sir, Isidore Cohen's.

Q. What office does he hold? A. He was an executive board member when I was there.

Mr. Turkus: I offer in evidence pages 54 and 55 of People's Exhibit Z-9 for identification.

By the Court:

Q. What was your salary as business agent?

A. \$80 a week.

By Mr. Turkus:

Q. While you were away—

Mr. Barshay: I object to it. First, it is not binding upon the defendant; secondly, it is entirely hearsay; and third, it is not properly authenticated.

4346

The Court: I don't know of any statute under which the minute book of an organization is permissible without putting a witness on the stand who attends the meetings and testifies that the minutes are correct.

Mr. Turkus: I will not press it.

Q. You just told Judge Taylor that your salary at that time was \$80 a week? A. Yes, sir.

Q. Will you look at People's Exhibit Z-11 for identification and tell us if you can identify that book. A. I can.

4347

Q. What book is it? A. That is a check book we had for '36—this is September here (indicating).

Q. What book? When you say "we", who is "we"? A. The Clothing Drivers Union.

Q. Local 240? A. That is right.

Q. Does that book contain in it checks which you received at the rate of \$80 a week until you wrote the letter to the union?

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Mr. Barshay: I object, unless it is of his own personal knowledge.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

Mr. Barshay:—He did not get the checks, your Honor.

The Court: Objection overruled.

4349

Mr. Barshay: Exception.

Q. Now, does People's Exhibit Z-11 for identification refresh your recollection as to when you got your last \$80 as business agent before you went away—the date when you received the check is on the top where you turn the page—look at the top one. A. Yes, sir, Check No. 3593.

Q. What is the date? A. October 30, 1936, check made out to Max Rubin for \$80 a week.

4350

Q. After that was the date the letter was written that was sent to the union in reference to your wife, is that correct? A. Yes, sir, that is right.

Mr. Turkus: Now I ask that this specific book be marked for identification.

(Received and marked People's Z-12 for identification.)

Q. I show you two People's Exhibits for identification, Z-10 and Z-12, being the first and second checks at the top of the page, and ask you if that represents the first splitup of the eighty

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into sixty and twenty. A. Yes, sir, that represents it.

Q. On that \$20 check, People's Exhibit Z-12 for identification, is that your signature on the back? A. No, sir, that is Feinberg's, but I want to say that he signed other checks for me, too. Even my \$80 checks he signed for me.

Q. But you got your \$20 differentials? A. Yes, sir.

Q. You say you are familiar with your wife's handwriting on People's Exhibit for identification Z-10, which bears her handwriting on the reverse side? A. I saw that before, yes, sir.

4352

Mr. Turkus: That check is re-offered in evidence.

Mr. Barshay: I object. This man affirmatively said the financial arrangement was made by him and not in pursuance of any instructions.

The Court: That is understood. It is clear he received no specific instructions from Lepke. It is relevant to show what he did. The objection is overruled.

4353

Mr. Barshay: Exception.

(Received in evidence and marked People's Exhibit 38.)

Mr. Turkus: May I read People's Exhibit 38 to the jury?

The Court: Yes.

Mr. Turkus: (reading) "Clothing Drivers & Helpers Union, Local 240, A.F. of L. 359.

"Pay to the order of Esther Rubin,

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Sixty Dollars"—"Sixty" written out in ink, in longhand.

"Clothing Drivers & Helpers Union, I.B. of T. & C., Local 240, A.F. of L.," drawn on the Amalgamated Bank, 11-15 Union Square, signed "Sam—Levine, Pres.; Louis Feinberg, Treas."

4355

On the reverse side is the endorsement "Esther Rubin" written twice, and "Received payment" through the check department of the Federal Reserve Bank of New York—and it has "1/30." "November 10, 1936." Another "1/10"

"Prior endorsements guaranteed. Manufacturers Trust Company, 3408 Jerome Avenue, New York, N. Y."

Q. That was your wife's name, Esther Rubin, and still is? A. Yes, sir.

Mr. Turkus: That check number should be "3599."

4356

I ask that this specific check be marked for identification.

(Received and marked People's Exhibit Z-13 for identification.)

Q. Will you look at People's Exhibit Z-13 for identification, at the top of the page, and tell us if that bears the endorsement of your wife Esther Rubin. A. It does.

Mr. Turkus: Offered in evidence.

Mr. Barshay: The same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

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(Received and marked People's Exhibit 39 in evidence.)

Mr. Turkus: May I read 39 to the jury?

The Court: Yes.

Mr. Turkus: (reading) "Clothing Drivers & Helpers Union, I.B. of T. & C., Check No. 3605, Pay to the order of Esther Rubin, Sixty Dollars, New York, November 13, 1936," drawn on the Amalgamated Bank, 11-15 Union Square. Signed "Clothing Drivers & Helpers Union, I.B. of T. & C., Local 240, A. F. of L.," same bearing the signature of "Sam Levine, Pres." and "Louis Feinberg, Treas." On the reverse side the name of Esther Rubin, with the Federal Reserve Bank clearing the check, and the Corn Exchange Bank.

4358

The Court: We will now take a recess, gentlemen of the jury. Remember the admonition heretofore given you in all respects. Please follow it.

4359

We will resume at two o'clock.

First the witness will go out.

(The witness left the Court-room.)

Now the jury may go.

(The jury left the court-room.)

Now the defendants are remanded.

(Recess taken until 2:00 P. M.)

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AFTERNOON SESSION—TRIAL RESUMED.

MAX RUBIN, resumed the stand and testified further as follows:

Mr. Turkus: Your Honor, there is a series of weekly checks to Esther Rubin in the sum of \$60 which, for the sake of expedition, I would like to offer in bulk as a single exhibit.

4361

Mr. Barshay: I object to it.

The Court: Authenticate them first.

4362

Mr. Turkus: All right. I ask to be marked for identification as a single exhibit the following checks, the numbers of which I will read off to you with the date: November 20, 1936, check No. 3608; November 27, 1936, check No. 3611; December 4, 1936, check 3616; December 11, 1936, check 3625; December 18, 1936, check 3630; December 24, 1936, check 3644; December 31, 1936, check 3647; January 8, 1937, check 3650; January 15, 1937, check 3656; January 22, 1937, check 3664; January 29, 1937, check 3668; February 5, 1937, check 3673; February 11, 1937, check 3678; February 19, 1937, check 3687; February 26, 1937, check 3690; March 4, 1937, check 3697; March 12, 1937, check 3701; March 19, 1937, check 3708; March 25, 1937, check 3712; April 2, 1937, check 3717; April 9, 1937, check 3727; April 16, 1937, check 3735; April 23, 1937, check No. 3740; May 1, 1937, check No. 3749; May 7, 1937, check No. 3757; May 14, 1937, check No. 3765; May 21, 1937, check No. 3770;

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May 28, 1937, check No. 3774; June 4, 1937, check No. 3781; June 11, 1937, check No. 3788; June 18, 1937, check No. 3791; June 25, 1937, check No. 3796. May they be deemed to be marked for identification.

The Court: As long as you specify the dates and numbers, yes.

(32 checks deemed marked People's Exhibit Z-14 for identification.)

4364

Mr. Turkus: May I hand the exhibit to the witness and have him check the signatures on the reverse side of those checks? It starts with check No. 3608, November 20?

By Mr. Turkus:

Q. As to the one dated November 20, 1936, check 3608, is that your wife's signature on the back of it? A. It is.

Q. The next one is check No. 3611. A. It is.

Q. That is your wife's signature. Now look at 3616. A. It is.

4365

Q. 3625. A. It is.

Q. Check 3630. A. It is.

Q. Check 3644. A. It is.

Q. Check 3650. A. There is a check 3647.

Q. That is right. A. It is.

Q. The next is 3650. A. It is.

Q. 3656. A. It is.

Q. 3664. A. Yes.

Q. 3668. A. Yes.

Q. 3673. A. Yes.

Q. 3678. A. It is.

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Q. 3687. A. It is.

Q. 3690. A. Yes.

Q. 3697. A. Yes.

Q. 3701. A. Yes.

Q. 3708. A. Yes.

Q. 3712. A. Yes.

Q. 3717. A. Yes.

Q. 3727. A. Yes.

Q. 3735. A. Yes.

Q. 3740. A. Yes.

4367

Q. 3749. A. Yes.

Q. 3757. A. Yes.

Q. 3765. A. Yes.

Q. Check No. 3770. A. Yes.

Q. Check No. 3774. A. Yes.

Q. Check No. 3781. A. Yes.

Q. Check No. 3788. A. Yes.

Q. Check No. 3791. A. Yes.

Q. Check No. 3796. A. Yes.

Q. And when you say "yes" does your wife's signature appear on the reverse side of each of those checks to which you have said "yes" as we have gone over them one by one? A. It does.

4368

Mr. Turkus: I offer in evidence all of those \$60 checks from the Local 240, Clothing Drivers & Helpers Union, to Esther Rubin, as one exhibit.

Mr. Barshay: Let me see them, please.

Mr. Turkus: That is not an examination of the exhibit. That is an examination of other checks.

Mr. Barshay: I move to strike out that remark.

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4369

Mr. Turkus: That is not a remark. That is an application addressed to the Court.

Mr. Barshay: Mine is an application.

Mr. Turkus: The exhibits were handed to counsel. Upon his examination he wanted to examine those offered in evidence.

Mr. Barshay: That is what I am doing.

Mr. Turkus: He is examining other checks.

Mr. Barshay: That is an outright lie. They are all in order, sir, and I can look at them one at a time. I cannot keep in mind the numbers as you have them here—

4370

Mr. Turkus: I heard Mr. Barshay say—

Mr. Barshay: —and when I discovered that one of the checks in order is to another person other than Mrs. Rubin, I said in the presence and hearing of Mr. Turkus, "That has no application to this." Don't say I have no right to be looking at something I have a right to be looking at.

The Court: This was entirely unnecessary. Mr. Barshay, all you had to do was say that Mr. Turkus was wrong and the Court would have accepted your word. Proceed with the examination.

4371

Mr. Barshay: I said it in just that way so that Mr. Turkus won't repeat this again.

The Court: This excitement must stop.

Mr. Barshay: I am not excited. I am incensed. There is a difference.

The Court: Both sides must keep their heads at all times. That is the way to try a case.

Mr. Barshay: I object to their introduc-

4372

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tion in evidence on the ground they are incompetent and not binding upon this defendant, especially in view of the witness' testimony that he made the financial arrangements himself.

The Court: Same ruling as to the others. Overruled.

Mr. Barshay: Exception.

(Checks described received and marked People's Exhibit 40 in evidence.)

4373

The Court: Just state briefly to the jury the amount of each check and the name of the payee. Is there one a week?

Mr. Turkus: One a week.

The Court: How much is each?

Mr. Turkus: \$60 to Esther Rubin, the wife of this witness.

Preparatory to offering as one exhibit eight checks, I ask that the following checks be deemed marked for identification as one exhibit.

4374

The Court: Are they in the book?

Mr. Turkus: They are in the book, pasted in.

Check No. 3804, July 2, 1937; 3808, July 9, 1937; 3811, July 16, 1937; 3814, July 23, 1937; 3821, July 28, 1937; 3829, August 6, 1937; 3834, August 13, 1937; 3845, August 20, 1937.

(Eight checks above mentioned deemed marked People's Exhibit Z-15 for identification.)

Q. I hand the witness People's Exhibit Z-15 for identification, and ask you, Mr. Rubin, to check the signature on the reverse side of each of those checks as I call them off: 3804, July 2, 1937. A. That is right.

Q. Is that your wife's signature? A. It is.

Q. Check No. 3808, July 9, 1937. A. That is.

Q. Check No. 3811, July 16, 1937. A. That is right.

Q. Check No. 3814, July 23, 1937, is that your wife's signature? A. That is right.

Q. Check No. 3821, July 28, 1937, is that your wife's signature? A. That is right.

Q. Check No. 3829, dated August 6, 1937, is that your wife's signature? A. That is right.

Q. Check No. 3834, August 13, 1937, is that your wife's signature? A. That is right.

Q. And finally check No. 3845, dated August 20, 1937, is that your wife's signature? A. That is right.

Mr. Turkus: The eight checks now deemed marked People's Exhibit Z-15 for identification are offered in evidence as one exhibit.

Mr. Barshay: I object to it on the ground heretofore urged, sir.

The Court: Overruled.

Mr. Barshay: Exception. May I look at them?

Mr. Turkus: I offer them in evidence.

Mr. Barshay: Exception.

(Eight checks previously marked People's Exhibit Z-15 for identification received and marked People's Exhibit 41 in evidence.)

4378

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Mr. Turkus: In lieu of reading all of the eight checks to the jury, may I merely give the date of the check, the amount, and the payee? They are weekly checks for \$60, to Mrs. Esther Rubin, terminating August 20, 1937.

The Court: All right.

4379

Mr. Turkus: Those are a series of eight checks in the second check book, beginning with No. 3804 and ending with 3845. The date begins July 2nd. They are weekly thereafter down to August 20th and they are all checks of \$60 each to Esther Rubin who was the wife of this witness.

Q. On Friday, Mr. Rubin, you referred in your testimony to a Mr. Louis Cooper of the Garfield Express and stated that you had met him on some occasions in New York and other occasions in New Jersey. Do you recall that testimony? A. I do.

4380

Q. Did you ever see Louis Cooper in New York City after the Dewey investigation started? A. No.

Q. Did you ever see any of these other defendants in association with Lepke? A. I did.

Mr. Rosenthal: I object to the form of the question.

The Court: Sustained.

Mr. Talley: I join in the objection.

Q. Did you ever see any of these other defendants at the same time you saw Lepke?

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Mr. Talley: Objected to, if your Honor pleases.

The Court: Overruled.

Mr. Talley: Exception.

A. I did.

Q. Who? A. I saw Mendy Weiss and Louis Capone.

Q. With respect to Louis Capone, when is the first time you saw him, if you can recall? A. I believe some time in 1932 or '33.

4382

Mr. Barshay: I object to it, entirely too remote. Move to strike out the answer.

The Court: Overruled.

Q. Where did you see him? Do you recall the place? A. I do not.

Q. Who was there at the time you saw him?

Mr. Rosenthal: That is objected to.

The Court: Overruled.

Mr. Rosenthal: Exception.

4383

A. I saw him with Lepke.

The Court: Is that in 1932?

The Witness: 1932 or 1933.

Q. Were you introduced to him?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. No.

4384

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Q. Was there anybody else there?

Mr. Rosenthal: That is objected to as already answered and repetitious. He was asked that question and he said he saw him with Lepke.

The Court: That is what he said.

Mr. Rosenthal: The very question was asked once before.

The Court: Just the three of you?

4385

The Witness: There was another one there.

The Court: You can say who the other was.

Mr. Rosenthal: I object to it.

Mr. Barshay: I object to it.

The Court: Overruled.

Defense Counsel: Exception.

A. Buggsy Goldstein.

Q. What was the name? A. Buggsy Goldstein.

4386

Mr. Barshay: I move to strike out the answer, sir.

The Court: Denied.

Mr. Barshay: Exception. I move for the withdrawal of a juror and a declaration of a mistrial on the ground of created prejudice.

The Court: Denied.

Mr. Barshay: Exception, sir.

Q. Did you see Louis Capone after that? A. Once after.

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Mr. Barshay: I object to it as not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: Exception.

Q. What was your answer? A. Once after that.

Q. Whom did you see him with?

Mr. Rosenthal: That is objected to.

The Court: Overruled.

4388

Mr. Rosenthal: Exception — unless a time and place is fixed first so that I can make my objection properly.

The Court: Fix it.

The Witness: In 1935, in the fall of 1935, in the office of Samuel Safier, I saw Louis Capone.

Mr. Rosenthal: Wait a minute, please. Now I object to it as having no bearing on the Rosen murder.

The Court: Overruled.

Mr. Rosenthal: Exception.

4389

A. I saw Louis Capone, Bugsy Goldstein, Pretty Amberg and Lepke.

Mr. Barshay: I move to strike out the answer, sir.

The Court: Denied.

Mr. Barshay: Exception. I move again for the withdrawal of a juror and the declaration of a mistrial on the ground of prejudice.

The Court: Denied.

Mr. Barshay: Exception, sir.

4390

Max Rubin—For People—Direct

Mr. Rosenthal: And I make the same motion.

Mr. Talley: Same on behalf of defendant Weiss.

The Court: Denied.

Q. Did you ever see Capone after that?

Mr. Cuff: Objected to as already answered.

4391

A. No.

Q. And the defendant Weiss, did you have occasion to see him?

Mr. Talley: Objected to, if your Honor pleases.

The Court: Overruled.

Mr. Talley: I ask the time and place be fixed.

The Court: He can say yes or no.

A. Yes.

4392

Q. Do you recall when and where it was you saw him for the first time? A. To my best recollection, I can.

Q. What is your best recollection? A. Perfection Coat Front.

Mr. Talley: When?

The Witness: In 1934.

Mr. Talley: I object to it, if your Honor pleases, and move to strike it out on the ground it is too remote, two years before the crime designated in this indictment.

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4393

The Court: Overruled.

Mr. Talley: Exception.

Mr. Barshay: Join in the objection and exception, sir.

Q. Who was there at the time you saw Mendy Weiss?

Mr. Barshay: Same objection.

The Court: Overruled.

A. Lepke.

4394

The Court: Anybody else?

The Witness: Lepke and Farvel Cohen.

Mr. Barshay: I again move for the withdrawal of a juror and the declaration of a mistrial, sir.

The Court: Denied.

Mr. Barshay: Exception.

Q. Did you see him on other occasions with Lepke?

Mr. Talley: Same objection.

4395

A. I may have.

The Court: Overruled.

Mr. Talley: I move to strike out that answer as not being an answer at all. Either he did see him or he did not see him.

The Court: Maybe he did or maybe he did not, or maybe he does not remember. Do you remember whether you did or not?

4396

Max Rubin—For People—Direct

The Witness: There was one time, your Honor, that Lepke sent me down to meet them on Madison Street.

Mr. Talley: I move to strike out this recital as not being responsive to the question. Did he see or didn't he?

Q. Tell us about this occasion that you started to tell the Judge.

4397

Mr. Talley: I object to that as being too general and indefinite.

The Court: Overruled.

Mr. Talley: Exception.

A. That is reason I said I may have. Lepke once told me that Farvel Cohen and Mendy Weiss have some sort of a proposition, a window cleaning or a window association—I don't remember whether it was window cleaning or window association; would I go down and see them. I met them down on Madison Street.

Q. Did you meet them both together?

4398

Mr. Talley: I move to strike that out as having no bearing, immaterial and irrelevant, having no bearing on the indictment here.

The Court: Denied.

Mr. Talley: It is not responsive to any question that was asked.

Mr. Barshay: I join in that objection and exception.

The Court: Denied.

Mr. Cuff: Exception.

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4399

Q. Do you recall whether you saw Farvel Cohen together with Mendy Weiss on that occasion? A. I did.

Mr. Talley: Same objection.

Q. Before recess today you had testified about the apartment on Flatbush Avenue which you had taken under the name of Harry Chernilow. Do you recall that? A. That is right.

Q. And about receiving the payments from Berger weekly while you were there? A. That is right.

4400

Q. You recall that? How long did you stay at that apartment located at 532 Flatbush Avenue under the name of Harry Chernilow? A. Until some time in August, 1937.

Q. Is there anything by which you can fix the exact date that you left that apartment under the name of Chernilow, in Flatbush Avenue, Brooklyn?

Mr. Barshay: I object to it.

The Court: Overruled.

4401

Mr. Barshay: Exception.

A. My boy's birthday is on August 9th.

Q. In relation to your son's birthday of August 9th, when did you get out of the Flatbush Avenue apartment in Brooklyn?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. I got out August 9th. Mr. Turkus, I may

4402

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not have taken the furniture out immediately but I got out of there August the 9th.

Q. When you yourself finally went out of there on August 9th, your son's birthday, where did you go?

Mr. Barshay: Object to it.

The Court: Overruled.

Mr. Barshay: This is not pursuant to instruction of any defendant, sir.

4403

The Court: I don't know what it is. I am going to find out. Where did you go?

The Witness: I went home. My wife had an apartment that she had taken during my absence at 245 East Gunhill Road, and I went there.

Q. Is 245 East Gunhill Road in the Borough of the Bronx? A. It is.

Q. When you went home, did you find your wife and child at 245 East Gunhill Road in the Bronx? A. I did.

4404

Q. After you got home did you again communicate with Mr. Edward Maguire?

Mr. Barshay: I object to it. It is not binding on this defendant, sir.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Just yes or no to that. A. Yes.

Q. Is that the same Mr. Maguire that you had consulted before you went away? A. Yes.

Q. And is that the same Mr. Maguire to whom you took Lepke? A. Yes.

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4405

Q. Just answer this question yes or no: Did you have a talk with Mr. Maguire? A. Yes.

Q. After that talk that you had with Mr. Maguire, did you ultimately go down to the office of Thomas E. Dewey?

Mr. Barshay: I object to it. It is incompetent, not binding upon this defendant.

The Court: Overruled.

Mr. Barshay: Exception.

4406

A. I went to a former office of Thomas E. Dewey, 120 Broadway.

The Court: Who is Maguire?

Mr. Turkus: Mr. Maguire is the labor lawyer. You remember in the early testimony on Friday—

The Court: All right; the one who advised you not to go out of town?

Mr. Turkus: That is right. The one to whom he brought the defendant Lepke under the circumstances he has related.

4407

Q. You say you went to the former office. Were those private law offices that you went to?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. Yes.

Q. And you say they were located at 120 Broadway? A. Yes.

4408

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Q. What is the name of that building, do you remember? A. No, I don't remember.

The Court: Equitable, isn't it?

The Witness: Equitable, yes.

Q. Did you there see somebody?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

4409

A. I met Mr. Frank S. Hogan and Barent TenEyck who were connected with District Attorney Dewey.

Q. Without stating what the conversation is—the law does not permit the stating of the conversation—did you have a talk with Mr. Frank S. Hogan and Mr. Barent TenEyck?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

4410

A. I did.

Q. Were Frank S. Hogan and Barent TenEyck then Assistant District Attorneys?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. They were.

Q. And were they attached to the office of Thomas E. Dewey?

Mr. Barshay: Same objection.

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4411

The Court: Overruled.

Mr. Barshay: Exception.

A. They were.

Q. In order to fix the time, can you, with reference to the last check that your wife got for \$60, People's Exhibit 41 in evidence, namely the one August 20, 1937, can you fix the time that you were in that office? A. Yes.

Q. Fix it. A. Right after that.

Q. After you spoke to Assistant District Attorneys Hogan and Ten Eyck, did you go back to work as a business agent?

4412

Mr. Barshay: I object to it. It is immaterial and incompetent.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. As business agent for Local 240 of the Clothing Drivers & Helpers Union? A. Yes.

Q. While performing your duties as business agent, Mr. Rubin, did you come in contact with Paul Berger? A. I did.

4413

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Did you tell anybody that you had been down to Thomas E. Dewey's office and saw Hogan and Ten Eyck?

Mr. Barshay: I object to it.

The Court: Overruled.

4414

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Mr. Barshay: Exception.

A. I did not.

Q. You say you met Berger. Did you meet him frequently at that time?

Mr. Barshay: I object to it, not binding on this defendant.

The Court: Overruled.

Mr. Barshay: Exception.

4415

A. I did.

Q. Where did you see him?

Mr. Barshay: Same objection, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. On Fifth Avenue in the clothing center.

Q. And did you at those meetings talk with him?

Mr. Barshay: I object to it, sir.

4416

Q. Just yes or no, that is all I want.

The Court: Yes or no.

A. Yes.

Mr. Barshay: Exception.

Q. Did you have any talk with Berger in which the name of Lepke was mentioned?

Mr. Barshay: I object to it and I object to counsel leading.

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4417

Mr. Turkus: I have to lead at this point. May I tell your Honor why?

The Court: Don't say anything.

Mr. Turkus: I am merely marking something for your Honor to look at. (Handing paper to Court.)

Mr. Talley: I object to any communications of that kind being passed by counsel to the Court.

The Court: That does not call for a ruling. The Court will disregard it. You cannot give that conversation.

4418

Mr. Turkus: No, I don't want the conversation. I just want a yes or no answer.

Mr. Barshay: May the record indicate just exactly what the Assistant District Attorney passed to the Court?

The Court: No.

Mr. Barshay: Exception.

The Court: I ruled in your favor. You take an exception. Go ahead.

Mr. Talley: Can we have whatever it was that the District Attorney handed up to your Honor marked for identification.

4419

The Court: No.

Mr. Talley: I except to your Honor's action in accepting the communication.

The Court: I said I exclude it so the rest of this is just a show.

Mr. Talley: What is that, sir? We do not hear you down here.

The Court: I don't repeat. I am talking audibly and anybody in the courtroom can hear it.

4420

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Mr. Talley: We do not hear it; whether you are speaking audibly or not, we don't hear you.

The Court: Proceed.

Mr. Turkus: Was I overruled?

The Court: I said you cannot put that in evidence and he cannot speak about the substance of the conversation because that reveals a part of the conversation, in substance.

4421

Mr. Turkus: All right.

The Court: The objection is sustained.

Q. At that time were you personally in communication or contact with Lepke? A. No.

Q. Did you know where he was? A. I did not.

Q. I want to direct your attention to a time in September, 1937, and ask you if there was such an occasion when you had lunch with Paul Berger?

Mr. Barshay: I object to it, not binding on this defendant.

The Court: Overruled.

4422

Mr. Barshay: Exception.

A. I did.

Q. Prior to the luncheon that you had with Paul Berger, when was the last time prior or before that that you had seen Paul Berger?

Mr. Barshay: I object to it, not binding on this defendant.

The Court: Overruled.

Mr. Barshay: Exception.

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4423

A. I saw him the day before the luncheon.

Q. And when prior to that had you seen Paul Berger last?

Mr. Barshay: Same objection, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. About two or three weeks.

Q. Getting back to the day before the luncheon, where did you see Paul Berger? A. On Fifth Avenue.

4424

Q. Was the luncheon engagement made for the following day at that time?

Mr. Barshay: I object to it, no relevancy with respect to this defendant.

The Court: Overruled.

Mr. Barshay: Exception, sir.

A. It was.

Q. Did you keep the engagement?

Mr. Barshay: I object to it, sir.

4425

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. Where did Paul Berger take you to luncheon?

Mr. Barshay: I object to it, not binding on this defendant.

The Court: Overruled.

Mr. Barshay: Exception.

4426

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A. Child's restaurant on 14th Street east of University Place, on the south side of the street.

Q. Did you there, in that Child's restaurant, have luncheon with Paul Berger?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

4427

Q. Can you identify this man (indicating man who has entered courtroom)?

Mr. Barshay: May the record indicate that this man has been brought in by a sheriff?

The Court: Who brought him in?

Mr. Turkus: A sheriff.

Mr. Barshay: May we get the sheriff's name?

(Name given: Catapano, Deputy Sheriff, Kings County.)

4428

Mr. Turkus: May we have an answer to the question?

Mr. Barshay: Will your Honor give me an objection to this procedure?

The Court: Yes.

Mr. Barshay: Exception.

(Pending question read by the reporter.)

A. I can.

Q. What is his name? A. Sam Levine.

Mr. Turkus: (To man in question) What is your name?

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4429

(Name given: Sam Levine, 206 Grafton Street.)

Mr. Talley: What is his present address, if your Honor pleases? May we have that?

The Court: You mean where he is being detained?

Mr. Talley: Yes.

The Court: No.

Mr. Talley: Exception.

(Sam Levine leaves the courtroom.)

4430

Q. Is that the Samuel Levine concerning whom you testified before this jury? A. Yes, that is the "Sneaky" I spoke about.

Q. Mr. Rubin, can you identify these gentlemen (indicating two men who have entered the courtroom)?

Mr. Barshay: I object to it, sir.

The Court: How many?

Mr. Turkus: Just two of them.

The Court: Overruled.

Mr. Barshay: Exception.

4431

A. The smaller one is Davey Kantor and the taller one is Louis Feinberg.

Mr. Turkus: (To men in question)
What is your name?

A. David Kantor, 295 East 94th Street, Brooklyn.

Mr. Turkus: May the record indicate he is the smaller of the two?

And your name?

4432

Max Rubin—For People—Direct

A. Louis Feinberg, 1145 President Street.

(Mr. Kantor and Mr. Feinberg leave the courtroom.)

Q. Is Feinberg the official with 240 concerning whom you gave testimony on Friday and today? A. Yes, sir.

Q. That is the Louis Feinberg you know as Jeff? A. Yes, sir.

4433

Q. And the other man, Kantor, is the one you testified about on Friday as having taken him out of town pursuant to instructions? A. That is right.

Q. We will go back to that luncheon that you had with Paul Berger in September, 1937. I think you have already told us that you did have lunch with him. Do you know how long you spent in Child's restaurant? Have you any idea? A. I should say about an hour. It was right before, we left right before the noon lunch. People were beginning to come in so we went out.

4434

Q. Toward the end of September, 1937, did you testify before a Grand Jury in Manhattan, an inquiry being held by the office of Thomas E. Dewey?

Mr. Barshay: I object to it, sir, not binding upon this defendant.

The Court: Overruled.

Mr. Barshay: Exception.

Mr. Talley: I object to it upon the ground it is incompetent, irrelevant, immaterial, November, 1937.

Mr. Turkus: It is September.

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4435

Mr. Talley: September, 1937, more than a year after the alleged killing as set forth in the indictment, too remote.

The Court: Overruled.

Mr. Talley: Exception.

Q. What was the answer? A. I went to the Grand Jury, yes.

Q. And did you testify before a Grand Jury in Manhattan?

Mr. Barshay: Same objection.

4436

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. Do you recall the days that you testified?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. Only one. It was either the 27th or the 28th of September, 1937.

4437

Q. One day or the other? A. Either one day or the other, yes.

Q. Several days after you testified before the Grand Jury in Manhattan, and specifically on October 1, 1937, what happened to you?

Mr. Barshay: I object to it, sir.

The Court: Now you are on dangerous ground. I cannot allow that unless it is connected up. There can be no speculation.

Mr. Turkus: It will be connected up

4438

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by other witnesses. Your Honor must have in mind my opening statement to the jury.

The Court: That puts upon the Court the obligation of being under the necessity of declaring a mistrial if you fail to connect it up. That is not right.

Mr. Turkus: Well, then I will connect it first and recall the witness later.

The Court: You will have to do that.

4439

Mr. Barshay: On the statement of the District Attorney, sir, I move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied.

Mr. Barshay: Exception.

Mr. Talley: I join in that motion.

The Court: Denied.

Mr. Rosenthal: I make a separate motion as to the defendant Capone. This is in no wise binding upon him or material to him. As such it is incompetent evidence.

4440

The Court: It has relation to whoever may be involved, but we cannot speculate as to whether any of them are involved. Denied.

Mr. Rosenthal: Respectfully except.

The Court: We cannot try the case inside out.

Q. Did you sometime in October, 1937, go to a hospital?

Mr. Barshay: I object to it and now move for the withdrawal of a juror and

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4441

declaration of a mistrial on the ground of prejudice and on the ground by indirection Mr. Turkus has sought to convey to the jury what the Court has seen fit to withhold.

The Court: Your objection is sustained and motion is denied.

Mr. Barshay: Exception.

Mr. Talley: I join in the motion and in the objection and I call your Honor's attention to the opening of the District Attorney in this case in which reference was made, in connection with my client, to what he is trying to bring out from this witness. It is highly objectionable,—fatal, it seems to me,—and trying to prove a crime other than alleged in this indictment, and it cannot be done.

4442

The Court: Your objection is sustained.

Mr. Turkus: May we have a five-minute recess at this time, your Honor? We have been going well over the hour.

The Court: You mean for the convenience of the witness?

4443

Mr. Turkus: What did you say?

The Court: So he can take his medicine?

Mr. Turkus: And at the same time I want to discuss something.

The Court: It won't be necessary to discuss anything with the Court.

Mr. Turkus: No, not with the Court.

The Court: I understand the situation. The witness may leave the stand for five

4444

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minutes, but the court will remain in order.

(After a short interval the witness resumed the stand.)

By Mr. Turkus:

Q. Mr. Rubin, in October, 1937, did you see Assistant District Attorney McCarthy of Brooklyn? Did you see him? A. October, 1937?

4445

Q. October, 1937. A. No, I did not see him.

Q. Did you hear his voice?

Mr. Barshay: I object to it and I move again for the withdrawal of a juror and the declaration of a mistrial.

The Court: Denied.

Mr. Barshay: Exception.

Q. Did you? A. Yes.

4446

Mr. Barshay: I object to it on the ground the foundation has not been laid, no proof that this man here has known Mr. McCarthy's voice.

The Court: Had you met him before?

The Witness: No, sir.

Q. You met him after, didn't you?

The Court: Did you meet him after that?

The Witness: Yes, sir.

The Court: Was it the same voice?

The Witness: The same voice, yes, sir.

Mr. Barshay: Exception.

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4447

Q. Now, on November 8, 1937, were you at home, living at home? A. Yes, I was home November 8, 1937.

Q. What was your home address then on November 8, 1937? A. 245 East Gunhill Road.

Q. In the Bronx? A. In the Bronx.

Q. Were you then under police guard?

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Exception. I again move for the withdrawal of a juror and the declaration of a mistrial on the ground of prejudice, as not binding in any wise on this defendant.

4448

The Court: Denied.

Mr. Cuff: Defendant Weiss joins in that motion.

The Court: Denied.

Mr. Cuff: Exception.

Q. What was the answer? A. I was.

Q. 24-hour guard?

4449

Mr. Barshay: Same objection.

The Court: It is immaterial what it was. I assume this is leading up to something.

Mr. Turkus: Yes, it will be connected with subsequent witnesses.

The Court: Don't try the case inside out.

Mr. Turkus: I am not.

The Court: I thought you were leading up to a visit and conversation.

4450

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Mr. Turkus: It is a foundation for other testimony that will follow.

The Court: That is as far as you can go in that now. You can bring the witness back on the stand if you lay the basis for this evidence.

Mr. Turkus: I will.

The Court: That would have to come under the theory of spoliation.

Mr. Turkus: That is what it is.

4451

The Court: I think they call it spoliatory. That is the only way in which you can hope to get that in.

Mr. Turkus: That is it.

The Court: After it is connected.

Q. In or about the month of December, 1937, did you see former Assistant District Attorney William E. McCarthy of Brooklyn? A. I did.

Q. Where did you see him?

Mr. Barshay: I object to it.

The Court: Overruled.

4452

Mr. Barshay: Exception.

A. In the office of Frank S. Hogan.

Q. And when you say the office of Frank S. Hogan, do you mean an Assistant District Attorney attached to the office of Thomas E. Dewey? A. That is right, and at that time they were in the Woolworth Building.

— The Court: You have referred to Mr. Dewey being District Attorney. He was not District Attorney at that time.

Mr. Turkus: I had put in evidence the

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4453

proper designation. He was a special prosecutor.

The Court: Wasn't he a Special Deputy Attorney General?

Mr. Turkus: No, Special Assistant District Attorney, under the order of the Governor and his oath of office—Deputy Assistant District Attorney.

The Court: Not Attorney General?

Mr. Turkus: No.

The Court: All right.

4454

Mr. Turkus: People's Exhibits 34 in evidence and 33 in evidence indicate the official capacity. He was sworn in as a Deputy Assistant District Attorney as indicated in People's Exhibit 34, in the office of William Copeland Dodge. That was the way it was conducted, under that designation. The exhibits keep the record correct.

Q. Did Mr. McCarthy, the former Assistant District Attorney of Brooklyn, ask you questions about the Rosen case?

4455

Mr. Barshay: I object to it as not binding upon this defendant.

The Court: Overruled.

Mr. Barshay: Exception.

The Court: Just yes or no.

The Witness: Yes.

Mr. Turkus: I ask that this be marked for identification.

(Papers marked People's Exhibit Z-16 for identification.)

4456

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Q. Do you know whether or not the questions and answers that were made at that time were reduced to writing? A. They were.

Mr. Barshay: Same objection.

The Court: Overruled.

Q. Is People's Exhibit Z-16 for identification a transcript—

4457

Mr. Talley: I object to that, if your Honor pleases, as not proper examination under any circumstances.

The Court: Sustained.

Q. Does the date December 16, 1937, refresh your recollection as to the specific time when you were questioned? A. Only that you told me that was the date. I had forgotten it. It was in December.

Q. Did you, in December of 1937, tell former Assistant District Attorney McCarthy the truth in that statement that you gave to him?

4458

Mr. Barshay: I object to it, your Honor, and I object to the form of the question. It is a self-serving declaration.

The Court: Sustained. The paper itself is not competent. Under the law it may be used only for examination, to establish a possible impeachment—

Mr. Turkus: I am not quarreling with the Court's ruling. The District Attorney has no quarrel with the Court's ruling.

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4459

Q. Do you recall when Judge O'Dwyer became District Attorney of Brooklyn? A. Only that I read about it.

Q. Did you follow any of his investigations with interest?

Mr. Barshay: I object to it, sir.

The Court: It makes no difference whether he was interested or not. Sustained.

4460

Q. All right. Did there come a time after Judge O'Dwyer was District Attorney of this county when you met a police official by the name of Michael J. McDermott?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. Yes.

Q. When was it that you met that police official? Give us his title, when and where you met him.

4461

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. He is the Chief Inspector. I met him in headquarters, Police Headquarters in New York City, that is, Manhattan.

Q. Do you remember when it was that you met Inspector McDermott? A. The early part of March, 1940.

Q. The law does not permit you to relate the

4462

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conversation. Merely tell the Court and jury, did Inspector McDermott speak to you? A. He did.

Q. And did you speak to him? A. I did.

Q. Following that conversation with Inspector McDermott, did you subsequently go some place?

A. I did.

Q. Where did you go?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

4463

A. In a room in the Bossert Hotel.

Q. Do you remember how long after your conversation with Inspector McDermott that you went to the room in the Bossert Hotel in Brooklyn? A. About a week.

Q. Whom did you meet at the Bossert Hotel in Brooklyn?

Mr. Barshay: I object to it, not binding upon this defendant.

4464

The Court: Overruled.

Mr. Barshay: Exception.

A. Judge O'Dwyer.

Q. By "Judge O'Dwyer," do you mean the District Attorney of Kings County? A. I do.

Q. The law does not permit you to relate the conversation. You can merely state yes or no. Did you have a conversation with Judge O'Dwyer at the Bossert Hotel at the time of that meeting? A. I did.

Q. Did you subsequently meet Judge O'Dwyer again at the Bossert Hotel?

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4465

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. I did.

Q. Do you remember when that was? A. About a week or so later.

Q. Do you remember who was with Judge O'Dwyer at that meeting?

Mr. Barshay: Same objection.

4466

The Court: Overruled.

Mr. Barshay: Exception.

A. Mr. Heffernan.

Q. By "Mr. Heffernan," do you mean an Assistant District Attorney attached to the office of Judge O'Dwyer? A. I do.

Q. The law does not permit you to relate the conversation. Did you have a talk with Judge O'Dwyer on that occasion? A. I did.

Q. When after that conversation with Judge O'Dwyer was it for the first time that you met Assistant District Attorney Joseph, Assistant District Attorney Klein, and myself, Assistant District Attorney Turkus?

4467

Mr. Barshay: Same objection, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. About a year later.

Q. Was that sometime in June, 1941? A. That is right.

Q. Without relating the conversation, did you talk to us? A. I did.

4468

Max Rubin—For People—Direct

Q. And have you testified about the Rosen killing before a Grand Jury in this county? A. I did.

Q. Are you under police guard?

Mr. Barshay: I object to it.

The Court: Sustained.

Mr. Barshay: I move again for the withdrawal of a juror and the declaration of a mistrial on the ground of prejudice.

4469

The Court: Denied.

Mr. Barshay: Exception.

Mr. Turkus: Subject to the further recall in connection with the matter which your Honor has temporarily ruled out, I am through with this witness.

The Court: You understand this now puts him under cross-examination on everything opened up thus far. At any time in the case, if you think you have established a sufficient ground to bring him back and ask those questions again, you may do so. Then there may be a cross-examination on that. It is all contingent on what is produced.

4470

Mr. Turkus: Yes, your Honor.

The Court: But the cross-examination up to the present moment cannot be put over until that contingency is, if ever, fulfilled.

Mr. Turkus: I had no intention of doing that.

The Court: All right. Do counsel want to cross-examine this afternoon?

Mr. Barshay: It is only twenty minutes, and we will take a little more than that

Max Rubin—For People—Direct

4471

to cross-examine him, so I think, for the convenience of everybody, if it is all right with the Court, we will consent that it go over.

The Court: You will have sufficient time to digest this situation because tomorrow is Election Day and the following morning we have a sad duty of attending the obsequies of Mr. William Ziegler, who is considered by many to be the dean of the Probation Department in this court. He dropped dead suddenly a few hours ago, during the night. The services will be held on Wednesday morning, and, I think, in decency, members of the staff should be permitted to attend out of respect for Mr. Ziegler's memory. That means for practical purposes of this trial that we can have the lunch hour at twelve o'clock, assemble at one o'clock on Wednesday, and then continue and work long hours in order to make up the lost time.

4472

Gentlemen of the jury, please do not discuss the case; let nobody talk to you about it.

4473

Please follow the further admonitions heretofore given.

We will reassemble promptly at one o'clock on Monday and continue for several hours in order to make up lost time.

The jury may leave.

Take the witness out this door.

Defendants are remanded.

(Thereupon an adjournment was taken to November 5, 1941, at 1:00 P. M.)

4474

Max Rubin—For People—Cross

Brooklyn, N. Y., November 5, 1941.

TRIAL RESUMED

MAX RUBIN, a witness in behalf of The People, resumed the stand and testified further as follows:

4475

Mr. Rosenthal: I have a motion to make prior to Mr. Barshay commencing his cross-examination. On behalf of the defendant Capone, at this time I move for a mistrial and the withdrawal of a juror on the ground of surprise and prejudice, evidence having been admitted over my objection as to this witness, having, in my estimation, no bearing either upon the crime the defendant Capone has been charged with, nor in any wise connected with him.

4476

The Court: The Court will have to charge at the proper time, when the legal point involved in the evidence is considered. The motion is now denied.

Mr. Rosenthal: Exception.

Cross examination by Mr. Barshay:

Q. Mr. Rubin, you testified against the defendant Buchalter on a prior occasion, didn't you? A. I did.

Q. That was in the Court of General Sessions, in February of 1940? A. That is right.

Q. Have you since that time read the minutes of that trial? A. I have not.

Q. Have the minutes been read to you? A. They have not.

Q. In the preparation of this case has anybody in this District Attorney's office referred you to questions and answers contained in these minutes? A. They have not.

Q. Did you know a man named Lou Honingsberg? A. Yes, sir, I knew him as Red Honingsberg.

Q. Did you see Mr. Honingsberg, whom you have referred to as Red Honingsberg, in Dewey's office sometime after 1937, sometime perhaps in the latter part of 1937 or the early part of 1938? A. I cannot recall it.

Q. Did you ever meet him at 5th Avenue, in the garment center, sometime in 1937 or 1938? A. If I did, he never spoke to me.

Q. Did you ever speak to him at all? A. Prior?

Q. Since 1937 or the latter part of it. A. No, sir.

Q. Is it your contention you never had a conversation with him at any time since 1937?

Mr. Turkus: I object to the question as to form.

The Court: As to the word "contention"—objection sustained.

Q. Did you ever speak to him, irrespective of the time, since 1936?

Mr. Turkus: Objected to as repetitious.

The Court: You mean about the case?

Mr. Barsbay: I want to lay my foundation for something.

4480

Max Rubin—For People—Cross

Q. (The Court) Do you recall? A. I may have spoken to him in 1936, prior to the time I went away.

Q. At any time, did you say to him, in the garment center, around 5th Avenue, "If it is the last thing I do, I will burn Lepke. As soon as Lepke goes to the chair I will feel that I have lived my life"? A. I would have been justified in saying it, but I never did.

4481

Mr. Barshay: I move to strike out the answer.

The Court: Strike out the first part; let the last part remain.

Mr. Barshay: I ask your Honor to tell this jury to disregard it.

The Court: Disregard it.

Mr. Barshay: May I ask your Honor now to please tell this witness to answer questions as I ask them and not to volunteer any information?

The Court: So instructed.

4482

Q. When did you testify before this Grand Jury in Brooklyn for the very first time in this case? A. About two weeks ago, or three weeks ago.

Q. Two or three weeks ago? A. Yes, sir.

Q. This is the 5th of November. Would you say in October of 1941? A. I think so.

Q. Before that, sir, you never testified in any Grand Jury in Brooklyn with respect to this case? Am I correct? A. No, sir.

Q. That is correct? A. Yes, sir.

Q. I believe you testified here you met the defendant Buchalter in 1927 for the first time?

A. I spoke to him—the first time I spoke to him, yes.

Q. That was in the year 1927? That is what you said here. A. About that time.

Q. You claim you received an education—
Question withdrawn.

Q. You said you received an education that extended up to 4-B, public school? A. That is right.

Q. And then you obtained whatever education you could get on your own merit? A. I tried to, yes, sir.

4484

Q. In the day time or the night time, in various schools? A. Whenever I could.

Q. Did you go to public evening high school at one time? A. No, sir.

Q. Have you gone to public school at night at any time? A. No, sir.

Q. But you did get a good education by yourself, didn't you? A. By having a dictionary and book alongside of me, doing it the hard way. I did the best I possibly could.

Q. You worked as a messenger for various telegraph companies? A. That is right.

4485

Q. You had no training in the clothing area, did you, before 1917? A. I did not have any before 1918, I believe.

Q. You said here that it was in 1917 that you became connected with the Cutters Union. A. It may have been 1918; I am not sure.

Q. So that ten years or thereabouts before you met the defendant Buchalter, you met a man named Noya, Jack Noya, didn't you? A. Yes, sir, I did.

Q. Was he the one who obtained for you a position in the bathrobe house? A. No, sir.

4486

Max Rubin—For People—Cross

Q. Was it Beckerman who obtained for you a position with this bathrobe house? A. No, sir.

Q. Did you obtain this position yourself? A. No, sir, the position comes into the office of the Cutters Union, and they give you a card, and with that card you go up to work.

Q. At that time wasn't Mr. Beckerman in charge of the Cutters Union? A. No, sir.

Q. Was Mr. Noya in charge of the Cutters Union? A. No, sir.

4487

Q. Was he a member of that union? A. Not in my time.

Q. He was a man who was instrumental in getting you into this union in 1917, wasn't he? A. No, sir.

Your answer is "No"? A. Positively.

Q. That is a definite "No," he did not? A. He did not.

Q. You said you testified in the flour case in General Sessions in February of 1940—page 1092, Mr. Turkus— A. That is right.

Q. Were you asked this question:

4488

"Q. When did you first meet Noya? A. Noya, since 1917; he was one of those who was instrumental in getting me into the union."

Did you make that answer to that question? A. If it is there I must have made it, but it is not entirely correct; it is not correct in the sense of the one that got me in the union.

Mr. Barshay: I object to that and move to strike it out.

Mr. Turkus: It is responsive to the question.

The Court: Let him answer.

The Witness: (continuing) The one that got me in the union was Abe Beckerman, who was a very close friend of Jack Noya, and I met him right after that, but he did not get me in the union.

Mr. Barshay: I move to strike it out as not responsive, to the question I asked him. I merely asked one question, sir: "Was that question asked of you and did you make that answer?" That is all at the present.

4490

Mr. Turkus: And the question is, "Is that correct?" and the witness made response.

Mr. Bashay: "Is that correct?" had only one reference, and that is, "Is it correct that that question was asked of him, and is that the answer he made, as I read it?"

The Court: Motion denied.

Mr. Barshay: Exception.

Q. Answer this question yes or no, will you please? Were you asked this question by the District Attorney—or counsel for the defendant, rather:

4491

"Q. When did you first meet Noya? A. Noya since 1917; he was one of those who was instrumental in getting me into the union."

Was that question asked of you and was that answer made—yes or no?

Mr. Turkus: Objected to as repetition.

The Court: Is that a record of this trial?

Mr. Barshay: In the flour case.

4492

Max Rubin—For People—Cross

The Court: You mean in General Sessions?

Mr. Barshay: Yes, sir, I directed his attention to that, and all I wanted was—

The Court: Isn't that what he just said? Didn't he just say if it was there he must have said so? Isn't that the same thing?

4493

Mr. Barshay: And then I asked him did he say so, but I never got an answer up to this minute. He made an explanation, your Honor, but he never answered the question.

The Court: Objection sustained as repetitious.

Mr. Barshay: Exception.

The Court: Also because the explanation he just gave sheds light on the possible meaning of the word "instrumental" as used in the alleged answer.

Mr. Barshay: Exception. I did not ask him for any explanation; that is just the point.

4494

The Court: Proceed.

Q. Did you first get into the union or did you first get a job in the bathrobe house? A. First I got into the union—I knew nothing about cutting.

Q. In other words, you were not a member of the cutters' trade upon admission to the Cutters Union; is that correct? A. Yes, sir.

Q. Wasn't that the ordinary course of events followed then by the union? A. Not the ordinary, no sir.

Q. Isn't it customary with unions that first

you have to be a member of a trade, to work at a trade, and then get into the union? A. Not during the war period, when they needed men. Then they took them off the streets almost. And that was the period when they could use cutters.

Q. You had not been experienced in the cutting field at all, had you, at that point? A. Mr. Barshay, can I make an explanation?

The Court: Yes.

The Witness: Being a puller does not necessarily mean being a skilled mechanic. All you did was to take the cloth and put it on a table, unroll it a certain length, take a pair of shears and cut the cloth that particular length. That is all you did.

Mr. Barshay: I move to strike it out.

By the Court:

Q. You mean you did not cut patterns? A. No, sir, you have to be skilled at that.

Q. You just mean unrolling a length of cloth? A. Yes, sir, except that in bathrobe houses, you don't have to fit a bathrobe. If you do not get it exactly right it does not make any difference.

Q. You mean that a bathrobe must not necessarily be a perfect fit? A. No, sir.

Mr. Barshay: I move to strike out the explanation as not responsive to any question I asked.

The Court: Motion denied.

Mr. Barshay: Exception.

By Mr. Barshay:

Q. Up to that point you knew nothing about the clothing industry; is that correct?

Mr. Turkus: I object to that as repetitious.

The Court: Objection sustained.

Q. You had no experience as a fitter, had you, when you joined the union? A. I was no fitter.

Q. You had no experience as a marker when you joined the union? A. I was no marker.

Q. You had no experience as a machine cutter, had you? A. I was no machine cutter.

Q. You had no experience as a fitter? I asked you that before, and you did answer. A. I said no.

Q. Now, before that you were quite friendly with Beckerman, weren't you? A. Yes, sir, quite.

Q. You met him in Socialist movements in which you and he were actively engaged; am I correct? A. I would not say actively engaged, but I met him through that.

Q. You spoke in Union Square when you were a young man, didn't you? A. I did.

Q. And Mr. Beckerman did too? A. I don't know.

Q. Did you ever see him there? A. No, sir.

Q. You spoke in various places about Socialism at that time? A. No, sir.

Q. Did you speak at the Rand School? A. No, sir.

Q. Did you speak at the Local Union on the subject of Social Economics? A. No, sir.

Q. Did you hold yourself out as instructor of Socialism at that time? A. I was interested in economics, particularly Marxism economics. At that date it was quite the vogue. It had nothing to do with the activity of any Socialist movement; it was an abstract philosophy.

Q. Marxism economics followed the Socialist economic theory? A. Did in colleges.

Q. Were those Socialistic economics followed? A. Socialists took them to their bosom, yes, sir.

Q. As a matter of fact, the Marxism theory is also interpreted as the Communist theory, too, isn't it? A. I don't know what interpretation they put on; I have never been a Communist.

4502

Q. You were quite an eloquent speaker in those days, weren't you?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant, nothing to do with the Rosen murder.

The Court: Objection sustained.

Mr. Barsby: Exception.

4503

Q. Your speaking attracted the attention of Beckerman and Noya to you, isn't that so? A. It is not so.

Q. As a matter of fact, isn't that the reason why you were taken into the Cutters Union, even though you had no prior experience in that? A. No, sir, that is not so.

Q. Mr. Noya at that time was a gangster, wasn't he—yes or no, please? A. How can I answer that question?

Q. If you cannot answer it, just say no. A. How do I know whether he was a gangster or

4504

Max Rubin--For People--Cross

not; he hung around with gangsters, but I never saw —

Q. You saw him around the union, didn't you, with gangsters, in 1917? A. I told you I was not there in 1917.

Q. In 1918? A. He was not connected with the union in 1918.

Q. When did you see him around with gangsters, in 1917 or 1918 or 1919? A. Whenever I went into his place of business.

4505

Q. You know that this Noya was a strong-arm man for the union, do you? A. Not in 1918, no, sir.

Q. Did you know it in 1919? A. No, sir, he was not there in 1919.

Q. I am trying to respect you; I hope you will be respectful to me. A. If you ask me for an explanation I will tell you the history of the union.

Q. If there is needed any explanation, Mr. Turkus is competent enough to ask you. A. He does not know that end of it.

Q. He is a very smart young man; he knows everything.

4506

Mr. Turkus: I object. This is no time for compliments.

The Court: Go ahead.

Q. Around that time was Abie Slabow a strong-arm man for the union? A. He was.

Q. Did you know that as a fact? A. I did not actually know it until much later, but I knew it.

Q. You knew Abie Slabow since 1923? A. Yes, sir, but I knew he was on the payroll of the union.

Q. You knew he was not a cutter? A. Oh, yes.

Q. Frankly, he was a tough guy, a strong-arm man at that time for the union, wasn't he? A. In 1919?

Q. In 1923. A. Yes, sir.

Q. You knew Terry Burns in 1923? A. Yes, sir, after that, too.

Q. Did you know Terry Burns in 1923—yes or no? A. Of course I knew him.

Q. Did you know Terry Burns was a gangster, a guerilla, a strong-arm man of the union with which you were connected at that time? A. Of course I did.

Q. Did you know Johnny Spanish at that time? A. I did not know him, no.

Q. Did you know him by reputation then? A. Yes, sir, I even knew he was around there.

Q. Did you see him around there? A. Yes, sir.

Q. Did you know he was a gunman and a gangster for the union then? A. I did not know if he was a gunman for the union or a gangster for the union, but I know he was around there.

Q. He was on the payroll, wasn't he? A. Not of the Cutters Union.

Q. For the Cutters Union or some affiliated union, was he on the payroll? A. If I answered that it would only be hearsay.

Q. Tell me. A. He was on the payroll of the Shirtmakers Union, which was part of the Amalgamated at that time.

Q. You knew Curly Holtz too then, didn't you? A. I knew Curly Holtz in 1926, yes, sir.

Q. You knew who he was—yes or no? A. I knew who he was, yes, sir.

Q. How long did you work for this bathrobe company? A. I cannot tell you.

4510

Max Rubin—For People—Cross

Q. Was the name of that firm Behrens & Blinmark(?)? A. When I worked for them it was Pollock & Behrens; then it later became Behrens & Blinmark.

Q. Do you recall you were sent there by the union, and promptly they expressed to you dissatisfaction with your work because you were not skilled as a cutter? A. That is not so.

Q. You were still on their payroll? A. I worked there.

4511

Q. Did you work a full day? A. Positively.

Q. Every day? A. Every day; you don't know that concern when you pass that remark.

Mr. Barshay: I move to strike it out.

Mr. Turkus: The answer is responsive to the question.

The Court: Strike out the last part of the answer.

4512

Q. When you were on the Joint Board of this union, part of the things that were discussed were grievances of employees against the employer, weren't they? A. That is right.

Q. Accused of violating union conditions? A. Yes, sir.

Q. Where a strike was to be called? A. Yes, sir, that is right.

Q. When a strike was to be called? A. That is right.

Q. Who was to run the strike, who was to manage it? A. Well, generally a small group that ran those things.

Q. Mr. Noya was not a member of the joint board at that time with you? A. No, sir.

Q. Did you communicate information that you gathered at these meetings to Noya on the outside? A. I did not have to.

Q. Did you? A. No, sir.

Q. Did you receive compensation from Mr. Noya at any time for that information? A. No, sir.

Q. Is it not a fact that Mr. Noya used that information to shake down manufacturers where strikes were to be called, to your knowledge? A. No, sir.

4514

Q. Is it not a fact that Mr. Noya constantly shares the proceeds of these shake-downs with you, for your information? A. Mr. Barshay, I didn't have enough to eat; he used to buy my meals. You are talking absolute rot.

Mr. Barshay: Will your Honor instruct this man to answer questions?

The Court: Go ahead.

Q. It is true Mr. Noya did buy you your meals? A. I used to go to the same place to eat.

Q. You were getting \$35 a week from the union at that time, weren't you? A. Oh, no.

4515

Q. Weren't you getting that from the bathrobe house as a cutter, as you say? A. Whenever I worked. I didn't have to go anywheres.

Q. Mr. Noya was constantly taking you to Dinty Moore's? A. I think I have been just twice to Dinty Moore's.

Q. Did Mr. Noya take you there? A. I may have gone there with him.

Q. Once or twice, as you say, and you went there because Mr. Noya took you there? A. Yes, sir.

4516

Max Rubin—For People—Cross

Q. You yourself could not afford to pay those prices in those places? A. Positively not—in that place or any other kind.

Q. Did you, through Mr. Noya, in those places obtain favorite contracts for favorite expressmen—yes or no? A. No.

Q. Did you and Mr. Noya share in the kick-backs from these favorite expressmen's contracts which you obtained in those places? A. Your Honor, can't I answer these questions a little more elaborately?

4517

The Court: I am quite puzzled over something. Did you mean by your previous question that the man was taken to Dinty Moore's because he had nothing to eat?

Mr. Barshay: No, sir.

The Court: Because that is where very prominent and wealthy people go.

Mr. Barshay: I have no reflection on the place; that was not my intention.

4518

The Court: You mean whether he had ever gone there as a guest, in order to entertain him?

Mr. Barshay: Yes, may call it "guest"; I have another name for it.

The Court: I am trying to find out. All right, then the Court's question remains unanswered. Go ahead. I thought you were trying to create the impression the witness was found hungry on the street, needed a meal and was taken into Dinty Moore's for a sandwich.

Mr. Barsha: You get that impression

Max Rubin—For People—Cross

4519

when the man in reality was getting \$35 a week from a bathrobe house?

The Court: Don't argue. I am puzzled as to why you ask it.^{*} Proceed. When I got up there I meet judges from General Sessions or men having their annual blow-out. Go ahead.

Mr. Barshay: I take an exception to your Honor's remarks.

The Court: Yes, let the jury disregard them.

4520

Q. Were you on the Finance Committee in those days in the union? A. About 1923.

Q. That is the time after you came back from Germany? A. Yes, sir.

Q. We will get back to before you went to Germany: You were married to Miss Coghlin, weren't you? A. Yes, sir. Why bring her in—the woman is dead, you know.

Q. You don't blame that on me, do you? A. I blame it if you bring her in.

Q. I have a right to cross-examine you the same as Mr. Turkus has a right to cross-examine you. A. That is all right; I was married to Ady Coghlin.

4521

Q. During the war period in 1917, you and Mrs. Rubin and the child you had by her, were separated. Am I right? A. Yes, sir, on and off separated, now separated and together.

Q. And there came a time when you had to register for the draft? A. Yes, sir.

Q. And in your registration you asserted you were a married man living with your wife and

4522

Mar Rubin—For People—Cross

supporting her and the child—yes or no? A. Yes, sir.

Q. And by virtue thereof the Registration Board gave you a 4-A classification as a married man? A. Yes, sir, that is right.

Q. That postponed your being called by the War Department? A. Yes, sir.

Q. Was it at that time you were actually engaged in espousing the Marxism manner of economics? A. No, sir, I was looking for work then.

4523

Q. I did not know that was your full day's work, but in addition to looking for work did you do that? A. No, sir.

Q. Was it at that time you spoke in Union Square against American participation in the war? A. Never.

Q. So there came a time when your wife complained to the Draft Board about the assertion when you registered that you had been living with and supporting her was not true? A. That is not a fact.

4524

Q. Is it not a fact she complained to the Draft Board? A. She complained, but she did not say what you said she said.

Q. She said you were not supporting her? A. That is what she said.

Q. She said you were not supporting her son, your son? A. She did not say anything about the son; she said I was not supporting her, that she worked, she was a stenographer and typist, and she went to work, but I was not working.

Q. Her complaint was then entertained by the War Department, and were reclassified? A. Yes, sir.

Q. In other words, Mr. Rubin, the War Department believed her story to be true? A. It was true.

Mr. Turkus: Objected to.

The Court: Objection sustained.

Q. So you were reclassified to 1-A? A. Yes, sir, that is right.

Q. How much money were you making then per week? A. Would you really believe it if I told you I went to work on the docks as a long-shoreman, pushing a wheeltruck, and the only place I could work was in the fruit market, where the work was lighter? I could not get a job in those places where they lifted heavy suiting cases. I did not have the strength, but I could push a wheelbarrow to a freight car to earn myself \$3 a day. And I would have to go over every day hoping to get work, because I stood on a line with the men and they called me whenever they wanted me.

4526

Q. You just told this jury you got in the Cutters Union at that time because of the necessity of supplying war material? A. I said in 1917, didn't I?

4527

Q. I am speaking about 1917. A. I did not say anything about '17—in 1918 I got in the Cutters Union.

Q. Weren't we in the war in 1917?

Mr. Turkus: I object. The Court will take judicial notice of when we entered the war.

The Court: Objection sustained.

Mr. Barshay: Exception.

4528

Max Rubin—For People—Cross

Q. Don't you know as a matter of fact that America got into the war on the 6th of April, 1917?

Mr. Turkus: Objected to.

The Court: Sustained as immaterial.

Mr. Barshay: Exception.

4529

Q. There came a time, didn't there, when you were called for actual service by the United States Government? A. That is right.

Q. You were notified to come? A. I was.

Q. And you refused to go? A. Presumably, yes.

Mr. Barshay: I move to strike out "presumably".

The Court: Let it stand.

Mr. Barshay: Exception.

Q. And you did not go? A. I did not go.

4530

Mr. Turkus: Objected to as repetitious.

The Court: Objection sustained.

Q. So you became a draft-dodger; is that right?

Mr. Turkus: I object to the characterization.

The Court: Objection sustained.

Mr. Barshay: Exception.

The Court: You see, the prejudice, as far as the Court can see, does not tend to impeach.

Mr. Barshay: I ask for the withdrawal

Max Rubin—For People—Cross

4531

of a juror and the declaration of a mistrial.

The Court: Motion denied.

Mr. Barshay: Exception.

The Court: A man may be honest or dishonest and yet be a soldier. He may be honest or dishonest and still be a conscientious objector. So far as I can see, it does not justify presenting to the jury on the question of impeachment.

Mr. Barshay: I take an exception to the court's remarks; there is no proof this man was a conscientious objector.

4532

The Court: Sustained.

Q. At that time you relied on what you were doing when you refused or did not answer the call of the United States Government for service?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Barshay: Exception.

4533

Q. Did you then adopt your brother's name, your brother's first name? A. No, sir.

Q. Did you live under your own name? A. I did.

Q. Did you stay in the country during the war? A. I did.

Q. And you worked? A. Whenever I could get it.

Q. You earned money? A. Whenever I could, yes, sir.

4534

Max Rubin—For People—Cross

Q. The war lasted during the year 1918, didn't it?

Mr. Turkus: I object. The court takes judicial of the duration of the United States war.

The Court: Sustained as immaterial.

Mr. Barshay: Exception.

Q. You were engaged—

4535

The Court: If you can tell the court how this has any bearing on credibility, I will revise my opinion concerning William Penn who refused to enter military service and came to this country—

Mr. Cuff: He was a Quaker. This man is not a Quaker.

Mr. Barshay: I object to the court's remarks, and I again move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied.

4536

Mr. Barshay: Exception.

Q. There is no doubt, Mr. Rubin, that you were not a conscientious objector, were you?

Mr. Turkus: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. There came a time when you wanted to go to Germany? A. That is right.

Q. That was in 1921? A. Yes, sir.

Q. You were a member of the Cutters' Union then? A. Yes, sir.

Q. Had you been working? A. At that time, yes.

Q. Had you been on the finance committee? A. I was.

Q. Had you been on the joint board? A. No.

Q. Had you been on the executive board? A. Yes.

Q. Had you been on the control board? A. No, sir, not there.

4538

Q. You applied for a passport to go to Germany? A. That is right.

Q. You were not sick? A. No.

Q. There was a special reason for you going to Germany? A. Yes, sir.

Q. Did you adopt your brother's name at that time? A. When I went for a passport?

Q. Yes. A. Yes, sir.

Q. So you used the name of Benjamin Rubin instead of Max Rubin? A. That is right.

Q. You swore to that fact in the application for a passport? A. I did.

4539

Q. You realized then you were under oath?

Mr. Turkus: I object. He said he swore.

The Court: That is what he said.

Q. You swore to that fact, didn't you?

Mr. Turkus: Objected to as repetition.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Did you know you were under oath?

4540

Max Rubin—For People—Cress

Q. (The Court) Did you know you were being sworn? A. Yes, sir.

Q. And you committed perjury?

Mr. Turkus: I object to the form of the question.

The Court: Sustained. That is a question of law.

Q. You knew you were swearing falsely?

4541

The Court: So he says.

A. I did.

Q. You had a reason for doing that, isn't that so? A. A reason for myself.

Q. I understand you had a reason? A. No outside reason.

Q. We will come to that. You knew then that the United States Government was looking for you as a draft evader? A. Oh, no, I went under my own name, went in the Cutters' Union in my name.

4542

Q. When you went to Germany, I am speaking about, and no other time, when you swore that your name was Benjamin Rubin, did you at that time fear detection by the United States Government; yes or no? A. That would be one of the reasons, yes; the other reason was I was anxious to go.

Q. You were anxious to go? A. Yes, sir.

Q. You knew, if you signed your name, "Max Rubin", on the passport, the chances of being apprehended by the United States Government would be greater than if you used the name, "Benjamin Rubin," isn't that a fact?

Max Rubin—For People—Cross

4543

Mr. Turkus: I object.

The Court: Sustained as immaterial.

Mr. Barshay: Exception.

Q. When you went to Germany did you use the name in Germany of your brother? A. I did.

Q. For two years you remained in Germany?

A. I did.

Q. Under the name of Benjamin Rubin? A. Yes, sir, that is right.

Q. Then you obtained some work in Germany?

A. I did.

Q. The name of the man who employed you was Mr. Zuckerman? A. Yes, sir.

Q. That Mr. Zuckerman was engaged in the transmission of money to the Soviet Government? A. That is right.

Q. And at that time the United States Government did not recognize the Soviet Government, am I right?

4544

Mr. Turkus: I object.

The Court: Objection sustained, nothing whatever to do with the case; solely for the apparent purpose of trying to prejudice the jury.

Mr. Barshay: I take an exception, and I ask for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied.

Mr. Barshay: Exception. On the ground the court's remarks are prejudicial to this defendant.

The Court: Prejudicial to your attempt. Go ahead.

4545

4546

Max Rubin—For People—Cross

Mr. Barshay: I take an exception to that.

Q. You stayed there for two years? A. I did.

Q. You came back under the name of Benjamin Rubin again? A. The only way you could come back.

Q. Because that was the way your passport read? A. As you made your bed, so you lie in it.

4547

Q. Whenever you were asked what your name was, you said, "Benjamin Rubin"? A. In Germany.

Q. And on the way back to the United States? A. Yes, sir.

Q. When you applied for re-admission to this country, you did so under your brother's first name? A. I presented the passport.

Q. It was not for the purpose of evading detection by the Federal Government?

4548

Mr. Turkus: Objected to.

The Court: Sustained as immaterial.

Mr. Barshay: Exception.

Q. So you promptly re-joined the union, didn't you? A. I believe so.

Q. Did you get a job as a cutter? A. I cannot tell you.

Q. Did you work for any house in 1923? A. I worked for a few, I imagine.

Q. Can you name one? A. I think Sherrick and Hirsh is one.

Q. Will you tell me how long you worked there? A. I think for two seasons; I don't remember. I want to explain I went only into

work when there was seasons, I was the last one to get on and the first one put off, since I was unskilled.

Q. You had not yet advanced to a skilled workman? A. I never reached that honorable title.

Q. As a matter of fact, in your entire career with the union you never attained any skill at all in the trade? A. There were lots of them there that have reached that stage.

Q. You were strictly a union man?

4550

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Your activities were on behalf of the union, isn't that so, in the shops? A. In behalf of anybody.

Mr. Turkus: I object.

The Witness: What else can I say?

Q. In reality, you did no work at all but received pay because you were connected with the union as a delegate? A. Maybe you can say that for the District Attorney's office. I cannot say that for the Cutters' Union.

4551

Mr. Barshay: I move to strike it out.

The Court: Strike it out.

Q. When you got back in the union were you on the control board or the executive board? A. When I got back in the union I was on the executive board.

4552

Max Rubin—For People—Cross

Q. That was about 1925? A. Maybe so. I believe I got on the executive board in 1923.

Q. Immediately, when you came back from Germany? A. Within a short time; I do not know just how long.

Q. Now, can you explain to this jury the make-up of the union? A. Of a union, or Local 4 of the Cutters' Union?

4553

Q. Well, you confine yourself to the Cutters' Union in view of the fact you know most about that. A. There are members who work in the shops, known as workers. Then they had an executive board committee, I believe of twelve men, those were members of the executive board.

Q. How were they chosen? A. By election.

Q. To membership? A. Yes, sir; then they had three or four business agents and one manager.

Q. Who appointed them? A. Elected.

Q. By whom? A. By the membership.

Q. The joint membership or the executive board? A. The joint membership.

4554

Q. Go ahead. A. Then in the executive board they had a committee whenever a certain thing was to be done that required committee activity. They had that committee, and then they had a finance committee which took care of the bills of business agents, or whoever did the organizing work. They would look over these bills, O. K. them, and after they were O. K.'d, vouchers with the signatures of the recipients of the money were drawn up and the amount put in the ledger. And when I was there I was also secretary-treasurer, but there is no secretary-treasurer there now.

Q. You were really on the inside of that union? A. No, sir.

Q. Were you on the Finance Committee? A. Yes, sir, but that was not the real inside.

Q. Did you know, when you were on the Finance Committee, that the union had gunmen on their payrolls in those days? A. Those days and afterwards, yes, sir.

Mr. Barshay: I move to strike out the word "afterwards."

4556

Mr. Turkus: I move it stand. It is responsive.

The Court: Strike out "afterwards."

Q. You were well aware of that fact? A. Well aware, yes, sir, and they had them within the union, too. I want to help you.

Q. You will have all the chance you want when Mr. Turkus questions you, but in the meantime you can accommodate me. A. I will do so.

The Court: Did you say "gunmen"?

Mr. Barshay: Yes, sir.

4557

Q. In your duties, particularly in that union, did you wish to promote the cause of labor? A. That is right.

Q. And to organize non-union firms? A. No, sir, I never had that job.

Q. Wasn't that part of the union work? A. No, sir, mine was only a mouthpiece, that is all. All I was in my life was just a mouthpiece.

Q. You made speeches at various locals? A. When you cannot use small hands like that

4558

Max Rubin—For People—Cross

(indicating) you have got to use your mouth, and I used my mouth.

Q. That is what you did then? A. And all the time, yes, sir.

Q. Was it part of your job to see to it that manufacturers dealt only with union workmen, union drivers, and union helpers? A. My job?

Q. Yes. A. I was one of the executive board members.

4559

Q. Was that part of your duty on the executive board? A. No, sir, of course not. They are just small cogs in the wheel. What do they mean to any union?

Mr. Barshay: I move to strike it out as not responsive.

The Court: Let it stand.

Mr. Barshay: Exception.

Q. You say here that it was not your work to organize firms in the union field; is that what you said? A. Positively no.

4560

Q. On page 1091 of the flour case, were you asked this question:

"Q. To organize those firms that would not organize? A. I helped along in the field."

Q. Did you make that answer? A. Yes, sir. That is not organizing, helping along.

Q. Did you help along in the organizing? A. Yes, sir, of course, every union man helps along. That is his job.

Q. Did you make answer to the question that was asked of you just the way I read it? That is all I want to know.

Mr. Turkus: Objected to as repetitious.

Max Rubin—For People—Cross

4561

The Court: I thought he said he had.
Is that right?

The Witness: Surely.

Q. Were there strikes then, about that period, in 1923, 1924, and 1925? A. There were strikes all the time; the biggest strike was in 1921. Is that what you are alluding to?

Q. You were in Germany, so I cannot allude to that. A. I went to Germany September 21st.

Q. I am talking about after you came back. A. Yes, sir, there were strikes.

4562

Q. At that time was union and non-union competition very severe? A. It was.

Q. Was it part of your duty to check manufacturers and contractors and expressmen and allocate work to the union drivers and union expressmen? A. If you take out the word "allocate," the rest is true. You are talking now of 1925 and 1926, when I was in the Control Department, and I had charge of the Control Department for a while.

Q. If it was not your job to allocate it, it was the job of somebody in your union? A. No, sir, the Amalgamated is some big organization, Sidney Hillman at the head of it. Don't give me that title.

4563

Q. Were you part of that organization? A. I was that small (indicating).

Q. You are very modest, but were you a part of it? A. Very, very small; I have to be modest.

By the Court:

Q. Is that the same Sidney Hillman that is

4564

Max Rubin—For People—Cross

part of the Government at Washington today?
A. It is, sir.

Q. What is his title now, if he is there in Washington? A. I don't know; O. P. M., isn't it?

Q. Office of Production Manager? A. Yes, sir.

By Mr. Barshay:

4565

Q. When there were strikes, what did you do or what did your union do?

Mr. Turkus: I object to the form of the question.

The Court: Objection sustained.

Q. How did you attack non-union competition?

Mr. Turkus: I object to the form of the question, no such testimony in the record he did.

4566

Mr. Barshay: He said he was part of the organization, even though he played a small part in it, he was an officer of that organization.

The Court: If I could sense what this was leading up to, I would know better how to rule, but so far it seems to be rather far afield. There is nothing in the question to indicate it calls for information that has a bearing on the question of impeachment.

Mr. Barshay: The most important part is the first part of this man's direct testimony and I am attacking his credibility on that part.

Max Rubin—For People—Cross

4567

Mr. Barshay: I object to letting me finish the question.

The Court: We want no discussion on the question of labor union procedure. These things may be interesting enough when written by columnists and read in the newspaper. We don't want the jury to split on the question of what the union should or should not do. The case should be reasonably confined to the guilt or innocence of the accused.

4568

Mr. Barshay: Exception to that.

Q. Was part of the method of dealing with non-union competition the strike method?

Mr. Turkus: I object to the form of the question.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. You were part of this organization, weren't you, which declared strikes, weren't you?

4569

Mr. Turkus: Objected to as repetitious.

The Court: That is what he said.

The Witness: Your Honor, I had nothing to do with the calling of strikes, or anything like that.

Q. Did I accuse you of that? A. What else are you trying to do?

Q. Were you part of the organization which did that? A. So is every member connected with an organization, twenty-five thousand people in New York.

4570

Max Rubin—For People—Cross

Q. You were an officer? A. I was getting \$50. a week in the control department; you are making me as important as the Amalgamated of New York.

Q. I am not trying to do that. Will you be patient? Was strikes one of the methods used to deal with non-union competition?

4571

Mr. Turkus: I object. It is a well known fact, but it has nothing to do with the Rosen murder case.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Did that part of your union activity call for all sorts of work in connection with strikes?

The Court: You mean illegally?

Mr. Barshay: If the court wants me to anticipate—I don't want to say anything. I have an important case. If you insist, I will answer.

4572

The Court: I don't insist. The objection is sustained.

Mr. Barshay: If I did, I would lose my point that I have in mind.

The Court: Please do not argue. Hereafter the court will say either sustained or overruled to avoid argument on your part.

Q. Do you know your own union, of which you were a member, no matter how small a part you were, at that time, in order to win a strike, was using dirty and illegitimate methods?

Max Rubin—For People—Cross

4573

Mr. Turkus: I object. We are trying a murder case.

The Court: Objection sustained as indefinite, calling for a characterization which may or may not mean something.

Q. Did you know of your own personal knowledge at that time that men were being beaten up, merchandise was being stolen, in the course of that strike?

Mr. Turkus: I object; nothing to do with the Rosen murder case at that time.

Mr. Barshay: You started in 1917.

The Court: Its present form is objectionable, because it does not show who was doing the beating up. Objection sustained.

Mr. Barshay: Exception.

The Court: If you want to limit that to activity of the union to show participation by this witness, you can do so.

Mr. Barshay: I think I have a right to show—

The Court: Don't argue.

Mr. Barshay: Exception.

Q. Do you know of your own personal knowledge that the union, in calling and conducting a strike at that time, would beat up strikers, or rather non-strikers, and would spoil merchandise, throw acid on merchandise, break windows, throw stink bombs, et cetera?

Mr. Turkus: I object.

4574

4575

4576

Max Rubin--For People--Cross

The Court: You can ask him if he participated in any such methods.

Mr. Barshay: I don't want to ask him if he participated—that is not my point. I do not accuse him of participation actively.

The Court: Are you sure?

Mr. Barshay: Yes.

The Court: Are you through?

Mr. Barshay: Yes.

4577

The Court: Objection sustained. In seeking to know what the union does, we are entitled to know whether he participated in any illegitimate acts.

Mr. Barshay: I take exception.

The Court: I withdraw it, if you take a contrary view. I thought I was doing something in your favor. That you won't answer—all right, you are entitled to show whether or not he participated in any illegitimate acts, but not what anybody else did. I will not permit you to be disorderly when the court rules.

4578

Mr. Barshay: I am not disorderly.

The Court: You are when you are recalcitrant.

Mr. Barshay: I am not recalcitrant.

The Court: The court has ruled and deems you to be disorderly.

Mr. Barshay: I take exception.

Q. Did you at that time close your eyes as to what was going on in the 1925 strike, yes or no?

Mr. Turkus: Objected to.

Max Rubin—For People—Cross

4579

The Court: Objection sustained; too indefinite.

Q. Did you complain to any police official, to any District Attorney, or to any other official, with respect to what was going on in the 1925 strike?

Mr. Turkus: Objected to as having nothing to do with the Rosen case.

The Court: Objection sustained.

4580

Q. Was there a strike in 1925 that you know of, or was it in 1924? A. I don't know off-hand. Tell me and I will tell you the time. There were strikes at all times.

Q. There was a strike in 1925, wasn't there? A. There may have been.

Q. I am not creating it through the air. A. I don't know what you are talking about.

Q. You testified about this before, didn't you?

Mr. Turkus: I object. He did not testify about this at all.

4581

Mr. Barshay: I am talking about a strike.

The Witness: You are certainly reading that backwards.

Q. You read it at 293. Maybe it will refresh your recollection.

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: Exception.

4582

Max Rubin—For People—Cross

Q. When you were a member of this organization at any time when there was a strike, wasn't your method of attack against non-union competition the calling and execution of a strike?

Mr. Turkus: I object. It has nothing to do with the Rosen killing.

The Court: Objection sustained.

Mr. Barshay: Exception.

4583

Q. There were all sorts of methods used by you? A. By me?

Q. Yes. A. By me? You know what I amounted to in this union. By me?

Mr. Barshay: I move to strike out the answer.

The Court: Motion denied.

Q. You just said, "By me?", in the form of a question, intimating that you had no particular knowledge, is that so?

4584

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. In the flour case were you asked this question:

"Q. When you had severe non-union competition your method of attack was by strikes, is that right? A. All sorts of methods were used."

A. By the union, not by me.

Q. I can only read what I see in there. It says you, and I cannot interpret that to mean

the union. You understand me, don't you? A. Very well.

Q. Did you answer that question as it was asked?

Mr. Turkus: Objected to a repetitious.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. I take it at that time you were doing personally legitimate and honest work? A. I was working for the joint board in 1925.

4586

Q. You really were? A. I was.

Q. You were absolutely doing nothing dishonest at that time? A. Dishonest?

Q. Yes. A. Absolutely no.

Q. Was this question asked you:

"Q. You were not doing anything dishonest at that time, were you? A. Except that union activity called for all sorts of work and I knew of the work going on though I had no part of it at that time."

A. That is correct.

Q. "Q. You just closed your eyes to what was going on? A. Yes."

4587

Mr. Turkus: I object. Your Honor sustained an objection to that question. It cannot be done differently by another question.

The Court: Objection sustained.

Mr. Barshay: Exception.

Mr. Turkus: I ask that the jury be instructed to disregard the question and answer.

4588

Max Rubin--For People--Cross

The Court: The objection has been sustained. Disregard it.

Mr. Barshay: Exception.

Q. You did not withdraw from membership in that union when you saw what was going on, did you?

Mr. Turkus: Objected to.

The Court: Sustained.

4589

Mr. Barshay: Exception.

Q. You did not withdraw from the executive board at that time when that work was going on which you say you know of doing?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Do you remember there was a strike in the International Clothing Company? A. You mean the International Tailoring Company?

4590

Q. Yes. A. That is right.

Q. That was in 1926? A. It may have been that year.

Q. You participated in the conduct of that strike? A. During the summer.

Q. Did you, in any fashion whatever, in the summer months, visit the premises almost daily?

A. The premises, no, sir, outside.

Q. On the street? A. Yes, sir.

Q. There were pickets? A. There were.

Q. There were strikebreakers, as you called them there? A. Yes, sir.

Q. Jack Noya was connected with the union at that time? A. Yes.

Q. Paul Berger was connected with the union at that time? A. Paul Berger was connected.

Q. How long was Paul Berger connected with the union? A. I could not tell.

Q. Did you know Paul Berger's connection with the union? A. A machine cutter.

Q. And what else? A. Did whatever work they wanted him.

Q. Was he a strong-arm man? A. When they wanted him. 4592

Q. Was he a guerilla? A. When they wanted him to do something.

Q. Was he a guerilla? A. The union calls for a lot of work of that kind.

Q. Did your union? A. All unions would do that kind of work.

Q. Did your union call for that?

Mr. Turkus: Objected to as repetitious.

The Court: Objection sustained.

Mr. Barshay: Exception.

The Witness: I only got \$50. a week salary when I worked. 4593

Q. We will come to that. Mr. Turkus will ask you that in orderly fashion.

Mr. Turkus: I object to the form of the question.

The Court: Sustained.

Q. I am trying to find out, do you know— A. (Interrupting) if you are saying the Amalgamated instead of "my" union, and "your"

4594

Max Rubin—For People—Cross

union, and things like that, I will answer you, but when you say "my" union and "your" union, you are not putting the questions honestly, and you know it.

Mr. Barshay: Will your Honor admonish this witness?

The Court: Admonished.

4595

Q. I am only taking the testimony as you gave it in other places, so do not attribute it to me.

Mr. Turkus: I object to Mr. Barshay stating that on the record; it has no place in the record.

The Court: Objection sustained.

Mr. Turkus: I move to strike it out, and I ask that the jury be told to disregard it.

The Court: Yes.

4596

Q. Call it the Amalgamated, if you please. You were drawing money from that union, isn't that so? A. I was working for them in the control department at \$50. a week.

Q. You knew what you were doing? A. I was doing control work, and nothing but.

Q. You knew what the union was doing?

Mr. Turkus: Objected to as repetitious.

Q. (The Court) Did you do any illegal work? A. Positively no.

Q. (The Court) Did you participate in any acts of violence? A. No, sir.

Max Rubin—For People—Cross

4597

Q. (The Court) Did you give instructions as to acts of violence? A. No, sir.

Q. Did you close your eyes to it?

Mr. Turkus: Objected to.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. You did not withdraw from the Amalgamated by virtue of the work charged to them?

Mr. Turkus: Objected to.

4598

The Court: Sustained.

Mr. Barshay: Exception.

The Witness: No more than you withdrew from the District Attorney's office whenever work went on there.

The Court: Strike it out. The jury is instructed to disregard that. The witness is admonished not to do that again.

Q. In the International strike did you know a man named Burrow? A. Burrow?

Q. Al Burrow? A. There was a cutter named Al Burrow.

4599

Q. Did you point out his brother-in-law to Paul Berger during that strike, and Paul Berger killed him; yes or no? A. No.

Q. Do you know a cutter named Samuel Miller? A. You mean Nuttsy Miller?

Q. You have a name for everyone, call him Nuttsy. A. That is a name he has in the union.

Q. Did you know a man named Sam Miller?
A. I know fifteen hundred cutters in the union.

4600

Max Rubin--For People--Cross

Mr. Turkus: I move to strike out the previous question, "You have a name for everyone."

The Court: Yes.

Q. You called him Nuttsy Miller? A. Every body called him Nuttsy Miller.

Q. You did so? A. Yes, sir.

4601

Q. Was he molested because he demanded work when you would not give it to him? A. I? When did I ever have any power to give anybody any work? What job would I have? You have to go to the business agent and he gives you a card.

Q. But you get the work? A. What did I have to do with that?

Mr. Barshay: Will your Honor instruct him to answer questions?

The Court: Yes.

Mr. Barshay: I move to strike out the last answer.

The Court: Yes.

4602

Q. Do you recall Mr. Sam Miller stood on line one Saturday afternoon in Orlofsky's office while you were there, waiting his turn to see Orlofsky, do you recall that? A. I do not.

Q. Do you recall when Sam Miller could get no work in the Cutters' Union?

Mr. Turkus: I object.

The Court: Let him finish the question.

A. (Continuing) And had to take a job as a taxi driver?

Max Rubin—For People—Cross

4603

Mr. Turkus: I object; nothing to do with the Rosen killing.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Do you recall having a talk with Mr. Miller in the outer office of Mr. Orlofsky's, in 1925, or 1926? A. I do not.

Q. Do you recall when this Sam or Nuttsy Miller was so beaten that he had to go on crutches for eighteen weeks, do you recall that?

4604

Mr. Turkus: I object to that.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Did you point him out to Mr. Jack Noya on 12th Street and Broadway when Mr. Nuttsy, or Sam Miller, as I called him, was violently assaulted by Jack Noya; yes or no? A. What year is that?

Q. 1926 or 1925, was it in that year? A. I don't remember it.

4605

By the Court:

Q. Do you remember pointing him out? A. I positively did not; it is too ridiculous for words.

Mr. Barshay: I move to strike that out.

Q. Have you ever been a finger man? A. No, sir, never.

By Mr. Barshay:

Q. Did you know Kid Dropper, when he worked

4506

Max Rubin—For People—Cross

for the union in 1920 or 1921? A. I met Kid Dropper, I saw him in Jack Noya's place of business.

Q. Did you know he was a gunman? A. I did.

Q. Did you ever work with Dropper? A. No, sir, never; never even spoke to the man.

Q. Did you know Sammy Fields? A. Very well.

Q. In 1920 or 1921, what was his connection with the union? A. I don't know.

4607

Q. Did you know him in 1920 or 1921? A. I think I did.

Q. Did you know him in 1917, 1918 or 1919? A. I don't know what years he was around.

Q. You knew him for a considerable time? A. Yes, sir.

Q. Did you know he was then on the payroll of the union?

Mr. Turkus: I object unless the time is fixed.

4608

Q. From the time you knew him, whatever time that may have been? A. I don't know if he was on the payroll of the union until much later.

Q. Did you know that he was on the payroll of the union in 1923, 1924 and 1925? A. I could not tell you.

Q. Did you see him around? A. Oh, yes.

Q. Did you know he was a strong-arm man? A. I think they used him.

Q. You knew that? A. I did.

Q. You knew he did the same type of work as Berger? A. Yes, and there were a lot of others.

Q. And they were working for the same union from whom you were drawing pay?

Max Rubin—For People—Cross

4609

Mr. Turkus: Objected to.

The Court: Objection overruled.

A. I was working in the control department. They were part of the Cutters' Union. If any work was done, it was done from the Cutters' Union, not where I was.

Q. You came from the Cutters' Union; that does not necessarily say it was part of their work. That is how you got into that union, through the Cutters' Union? A. Yes, sir.

4610

Q. You did not withdraw from the union or from the executive board?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: I did not finish the question. I take an exception.

Q. Now, there came a time in 1927 when you met the defendant Buchalter? A. That is right.

Q. And there came a time that in a talk with Buchalter he told you that Orlofsky would have to give up his union? A. Yes, sir.

4611

Q. And that the other business agents would get a year's pay, isn't that right? A. That is right.

Q. And at that time you knew who Buchalter was? A. Yes, sir.

Q. You willingly participated with him, didn't you, in union activities? A. I did.

Q. The same as you willingly participated with Hymie Curly Holtz? A. When you mean participate, will you please explain what you mean?

Q. We will come to that. You know what the word participate means? A. I don't know what

4612

Mar Rubin—For People—Cross

it means because participation can mean a whole lot and mean very little. Tell me what you mean.

Q. There are two types of participation, active participation and passive participation. Do you know the difference? A. Mine was passive.

Q. That is exactly what I have been trying to prove, you knew what was going on but you did nothing about it? A. Positively no.

Q. And you did not withdraw from it? A. I did not.

4613

Q. Incidentally the control department is a department which knows what is going on in the union itself, isn't that so? A. They should know.

Q. They knew what gangsters were on the payroll? A. Oh, no, only about the work. They get a report from the express boy at that time and they were supposed to get it from the chairman of the shop, what cut work was in their particular place, but he would not always report the work if it did not belong to him, and we did not always know. It had nothing to do with people being on the payroll, that is, gangsters.

4614

Q. Sometimes you did know? A. I knew by the fact we should be able to.

Q. At any rate, you knew sometimes what was going on?

Mr. Turkus: I object.

The Court: Objection sustained.

Mr. Barshay: Exception.

Q. Did you know what kind of a union Orlofsky was organizing at that time? A. You are talking about after?

Q. When Buchalter told him he had to give up his union, what kind of a union did Orlofsky have? A. A rival union.

Q. What? A. A local in opposition to the Amalgamated.

Q. The Amalgamated was an all-powerful union at that time, wasn't it? A. I would not say all-powerful.

Q. Very powerful, numerically? A. Numerically, yes.

Q. Numerically, it was the strongest union? A. Yes, sir.

Q. Orlofsky lost out then? A. He was thrown out, yes, sir.

Q. In what year? A. 1931.

4616

Q. So he tried to form an independent union? A. Yes, sir.

Q. He did not have much success, did he, to your knowledge? A. Well, he had small success at first; it could have been more.

Q. How many firms did he have in his union, if you know? A. I don't know.

Q. Wasn't it one firm, just one? A. I don't know.

Q. Wasn't it a membership of less than one hundred? A. I could not tell you that.

Q. You did not know that at all? A. No, sir.

4617

Q. Wasn't it insignificant by comparison with the Amalgamated? A. For members?

Q. Yes. A. Of course.

Q. And, of course, insignificance in members was a very significant factor? A. Yes, sir.

Q. So Orlofsky was not giving up much; when he had to give up that union it was incipiently growing? A. At that time it may not have been large; it could have been large, or it could not have.

Q. You know who Lucky was? A. I heard about it.

4618

Max Rubin—For People—Cross

Q. Lucky Luciano? A. I heard about him.

Q. When Buchalter mentioned Lucky Luciano's name, you were fully familiar as to who he was? A. Yes, sir.

Q. You did not ask Buchalter for a year's pay from the union, did you, together with the other business agents, who he told you were going to get a year's pay and their connections would be severed? A. No, sir, he told me I did not have to.

4619

Q. All you wanted to know was, "What about me?" A. Yes, sir.

Q. You were interested strictly in yourself? A. Quite naturally, yes, sir.

(A recess of five minutes was taken at this point.)

The Court: We will not take a recess because of the trouble is disorganizing and reorganizing the court. All will remain here except the witness, who will come back as soon as he takes his medicine.

4620

(The witness leaves the stand.)

Q. I think I asked you, Mr. Rubin, about your knowledge of Lucky Luciano at that time, if you recall? A. I knew of him, yes.

Q. That is when you said, "What about me?" and you were told you could stay on; is that right? A. That is right.

Q. So it was then your own voluntary act to stay on, was it not? Yes or no. A. No, it depended on Buchalter whether I stayed on or not.

Q. What I am trying to find out from you, Mr. Rubin, is did you willingly stay on yourself?

Max Rubin—For People—Cross

4621

Mr. Turkus: Objected to.

A. Of course.

Q. So much so that you said, "What about me?" You were concerned about yourself? A. I wanted to know if I would go out with the rest of the Orlofsky group that did go out.

Q. You knew at that time, as you say in your language, who was controlling the union. Is that so? A. I did.

Q. Define to us please, if you can, what were the duties of the control board? A. When I was there? Is that what you want? Or the control board in general?

4622

Q. The control board when you were there. A. We got the reports. The express boys that worked on the different trucks gave in a daily report to Louis Feinberg of the amount of work that they took from a particular manufacturer to a particular pants, coat and vest maker. Feinberg would make that report out and bring it into the control department that I was in. I would then take those stubs to the respective managers. Each branch had a manager and these managers would look over those slips and if they disagreed with where the work was going to, they would stop the work in the shop where this work was in.

4623

Q. Before you got to the expressmen's local, did the control board turn over information of its meetings, the complaints, its grievances, to the Cutters Local? A. The managers of these particular groups?

Q. Well, the entire control board, through some person, did they communicate the result of the meetings to the Cutters Local? A. No.

4624

Mar Rubin—For People—Cross

When I was there, each manager took care of his own particular branch.

Q. But there would be some one then who could communicate to the Cutters Local what was going on, whether it was you or someone else? A. It would have been one of the managers perhaps of the different branches or sometimes it would be such a minute thing they could stop it themselves, they would not call on the Cutters.

4625

Q. And, as you said, the Cutters were the very hub? A. That is right.

Q. The most powerful financially in America? A. I cannot tell you that.

Q. Well, is it a fair guess to say that?

Mr. Turkus: I object to speculation.

The Court: Sustained.

4626

Q. It is true though that when every other method was used and failed in bringing non-union shops into some sort of a compromise, the Cutters Local would be called upon to do it; isn't that so? A. That is true.

Q. And if they acted, why that would practically end any non-union activity, if they acted? A. If they had the control of the shop, if they had one of their men in there that they could call out, that would be the end of it, if they had one.

Q. Did you know the firm of Siegel & Cohen in New Jersey? A. I did.

Q. Beckerman was in control then of what? A. He was the manager of the Joint Board.

Q. What position did you hold?

Max Rubin—For People—Cross

4627

Mr. Turkus: I object unless the time be fixed.

Mr. Barshay: He can fix the time.

Mr. Turkus: I have an objection, your Honor.

Q. Can you fix the time?

The Court: Fix the time.

A. When Beckerman was there?

Q. The Siegel & Cohen incident. A. With Beckerman, you mean?

4628

Q. Yes, with Beckerman.

Mr. Turkus: I object to the use of the word "incident".

The Witness: I know what he is alluding to.

The Court: What word?

The Witness: Incident.

Q. I won't describe it. Call it transaction. What year was it, Mr. Rubin? A. I had no transaction.

4629

Q. Was it 1926? A. I had no transaction.

Q. Was it directly before— A. But I had no transaction.

Q. We will get to that. A. O.K.

Q. You are entitled to your version too. I admit that, but I have a right to ask you about it.

Mr. Turkus: I object to the statement of Mr. Barshay; ask it be stricken from the record and the jury told to disregard it. It was not a question.

The Court: Disregard it. Proceed.

4630

Max Rubin—For People—Cross

Q. Was it the year of 1926 or 1927? A. About then.

Q. Did you and Beckerman accuse each other of extorting \$1500 from that firm?

Mr. Turkus: I object to the form of the question.

The Court: Sustained.

Mr. Barshay: Exception.

4631

Q. Did you extort that money or participate in the extortion of that money from that firm?

A. There was no money extorted.

The Court: By you?

The Witness: By me at all. If you want the incident, I will give it to you and then you won't have to ask so many questions. I will help you.

Mr. Barshay: I appreciate that but I am going to ask some questions and Mr. Turkus will ask you some other questions.

4632

Mr. Turkus: I object to it now because it has nothing to do with the Rosen killing. We are here trying a murder case.

Mr. Barshay: This affects his credibility, sir.

The Court: Next question.

Q. Did Beckerman charge you with taking that money?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Did you charge Beckerman with taking that money?

Max Rubin—For People—Cross

4633

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Barshay: Exception.

Q. At any rate, as the result of that incident, your connection with the Joint Board ended; is that correct?

Mr. Turkus: I object to the form of the question.

The Court: Sustained.

Mr. Barshay: Exception.

4634

Q. Right after that did you sever your connection with the Joint Board?

Mr. Turkus: Objected to. It does not affect the Rosen killing or his credibility.

The Court: Sustained.

Mr. Barshay: Exception.

Q. When did you sever your relations with the Joint Board? A. About 1927 or 1928.

Q. With respect to the month, can you tell us in relation to the Cohen incident?

4635

Mr. Turkus: That has been objected to and sustained.

The Court: Sustained.

Mr. Barshay: Exception.

Mr. Turkus: I object to the innuendo.

Q. Can you tell us the month?

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial.

The Court: Immaterial.

Mr. Barshay: Exception, sir.

4636

Mar Rubin—For People—Cross

Q. Where were you living then, Mr. Rubin?

Mr. Turkus: In 1927? I object to it. It is incompetent, irrelevant and immaterial, nothing to do about affecting his credibility, certainly nothing to do with the Rosen killing.

The Court: Overruled. Do you remember where you were living in 1927?

The Witness: I can give all the places that I lived in the Bronx and I may strike that.

4637

The Court: Do you remember where you lived in 1927?

The Witness: I may have lived at—

The Court: Do you remember?

The Witness: No, I do not, your Honor.

Q. Did you furnish a new home at that time?
A. 1927?

Q. Yes. A. No, sir.

Q. Did you buy new furniture for your home?

A. No, sir, not in '27.

4638

Q. Was it then that you got into the Expressmen's Local? A. That is right.

Q. What were you getting by way of salary with the Joint Board? A. \$50.

Q. Who suggested you going to the Expressmen's Local? A. Sneaky Levine.

Q. What was Sneaky Levine's position with the Expressmen's Local at that time? A. He was the business agent.

Q. How much was he getting? A. \$80.

Q. So Sneaky Levine gave up an \$80 job and he went back on his truck; is that correct? A. That is right.

Q. And you who had a \$50 job got the \$80 job? A. Oh, no. I got a \$50 job.

Q. Did you get \$80 from the union? A. I didn't, no.

Q. From the Expressmen's Local? A. I got \$50. I had to split some of it.

By the Court:

Q. You mean you got \$50 net? A. \$50 net, sir.

Q. Counsel wants to know what the gross was?

A. The gross was \$80 but I only got \$50.

Q. \$30 was the kick-back? A. It went to other officials in the union. I was a new man and in order for me to get in, I gave the rest of it to a fellow by the name of Mike Wolff and I stayed there under this arrangement for over a year until Mike Wolff went into the Waiters Union.

Q. That is, you had to pay \$30 a week to hold the \$80 job? A. That is right.

Q. That is what the Court means by kick-back. A. I was glad to do it, your Honor, so it was not a kick-back. I was glad to work.

By Mr. Barshay:

Q. Did you give Mr. Levine a kick-back? A. No.

Q. So that he, according to you, of his own volition, gave up a job which paid him \$80 a week?

Mr. Turkus: Objected to.

Q. In order to drive a truck?

4642

Max Rubin—For People—Cross

Mr. Turkus: Objected to. It is repetitious.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Incidentally, while you were working for the Joint Board, you received \$50 plus expenses for an automobile? A. You don't know the Joint Board. No, I didn't.

4643

Q. Never? A. Not from the Joint Board. I got the expenses from the Expressmen's Local, if that is what you mean. I bought my own automobile but the expenses I got from the Expressmen's Union.

Q. Was it \$15— A. Whatever the bill was, the garage bill was sent to the office and not to me and they paid it.

Q. That you did not get from the Joint Board? A. No.

Q. So you bettered your position, did you not?

A. And the time you allude to was 1933 and 1934.

4644

Q. That is exactly what I was going to ask you next, the year 1933. A. '33 or '34, yes, sir.

Q. The Local at that time, 1927, that you joined it contained how many members? A. About eighty.

Q. It was a very small union, wasn't it? A. Always was. I think during the war they had about a hundred members.

Q. The dues were small, were they not? A. The dues were very high.

Q. Were they paid? A. Oh, yes.

Q. Was its treasury full? A. Oh, no. Only eighty members.

Q. That is what I asked you. A. Eighty members, two dollars a week.

Q. It was a very poor union, comparatively speaking?

Mr. Turkus: I object to it. He stated the amount of dues, two dollars a week, eighty members; the rest is speculation; incompetent, irrelevant, immaterial, nothing to do with the Rosen killing or affecting his credibility.

4646

Mr. Barshay: I guess nothing that I ask has anything to do with the Rosen killing.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Of course you never drove a truck? A. Never.

Q. And so you became familiar with the membership of that Local 240 which is the Expressmen's Local? A. I did.

Q. You came to know the members? A. I did.

Q. Intimately? A. More or less.

4647

Q. Did you listen to their grievances? A. They never had but when they did I listened to them.

Q. When they did have grievances, you listened to them and you tried to straighten them out? A. That is right.

Q. You knew exactly which truckman served which manufacturer, did you not? A. I did.

Q. You knew exactly about the amount of business that each truckman did with the respective manufacturers? A. I did.

Q. You knew approximately the financial con-

4648

Max Ryzin—For People—Cross

dition of each of those truckmen? A. I cannot tell you that, what their financial condition was.

Q. From the earnings? You could tell by the amount of business they did with the respective manufacturers? A. They always cried so you could never tell.

Q. But there was a way to find out from the manufacturer, was there not?

4649

Mr. Turkus: I object to it. This is going far afield, has nothing to do with the Rosen murder or his credibility.

The Court: Sustained.

Mr. Barshay: Exception.

Q. It was your business to know which manufacturers lived up to union conditions at that time? A. When I was in the union?

Q. Expressmen's Local. A. No.

Q. It was not your business to know which were living up to the union conditions and which were violating them? A. You mean the trucking bosses?

4650

Q. That is right. A. It was a very loose proposition. They worked practically 52 weeks a year and so if they put in extra hours in the busy season, it did not mean anything. Most of them worked all that time.

Q. I am not concerned with that. What I am trying to find out is this: Some manufacturers would give their work to non-union truckmen; isn't that so? A. They did.

Q. It was your job to know who they were? A. That is right.

Q. It was your job to stop it? A. Oh, no; just to know.

Q. After you knew that a manufacturer was giving his work to non-union truckmen, what did you do with your knowledge? A. Told it to Orlofsky or if Beckerman was in the office, in his department, Beckerman.

Q. And then they could do something about it? A. Sometimes they didn't.

Q. Did you check whether something was done about it? A. No.

Q. When did you become acquainted with Rosen? A. Well, I saw him and knew him around there for some time. I can't tell you when.

4652

Q. About when? A. I saw him on Louis Cooper's truck; I did not speak to him. It was a non-union shop.

Q. I am speaking of 1927, Mr. Rubin, 1927. Did you know Rosen then? A. I think I knew him then.

Q. When you first got into the expressmen's local, did you know him then? A. Not well enough.

Q. Is that the first time you had met him? A. No, I saw him around there.

4653

Q. You saw him before? A. Yes.

Q. Did you ever speak to him before? A. No.

Q. Did you have anything to do with him before? A. No.

Q. Did you know anything about him before? A. No.

Q. You did say you knew him or that you knew that he worked for Louis Cooper? A. Yes, I knew of him.

Q. That is in New Jersey? A. I knew of him.

Q. How long before 1927 did you know that fact? A. I imagine since I have been around there, but I am not sure.

4654

Max Rubin—For People—Cross

Q. That is many years? A. Yes. I am not sure, of course.

Q. Did you know Sobler? A. Oh, yes.

Q. Did you know Bluestein? A. Morris Bluestein, yes.

Q. Did you know a man by the name of Kelly? A. I knew Kelly, yes.

Q. Did you know where Rosen worked in 1927? A. I can't tell you.

4655

Q. Did you know that Rosen originally came from Brooklyn? Did you? A. From Brooklyn?

Q. Yes. A. I can't tell you that.

Q. Did you know that he moved over to Passaic to work for Sobler and Bluestein?

Mr. Turkus: I object to that.

The Court: Sustained as immaterial.

Mr. Barsbay: Exception, sir.

Q. Did you know it was Mr. Bluestein who gave Mr. Rosen a job when Sobler and Bluestein ran, in Passaic, the Carfield Express Company?

4656

A. I did not know those things in those days, no, sir.

Q. Did you know when Louis Cooper joined the Carfield? A. In my mind he was always there. I don't know. I don't remember him being out of there.

Q. Did you know that Sobler and Bluestein first owned it and then Louis Cooper came in afterwards? A. I thought that Louis Cooper started it.

Q. I thought that you were familiar with the truckmen business, being the business agent for the Local. A. Not at that time.

Q. That was 1927 and 1928. A. I did not know. I was practically new then.

Q. Did you know the reputation of Rosen in the industry at that time when you came into the Local? A. I did not.

Q. Did you learn it thereafter? A. Later on, about 19—in the 30's, and so on, I heard about Joe Rosen.

Q. You heard he was a very good workman, did you not? A. Yes.

Q. Did you also hear—

Mr. Turkus: I object to this. The character of the deceased is not in issue. There is no defense here of self-defense.

4658

Mr. Barshay: He brought this out on direct examination, sir. I am leading to something now.

Mr. Turkus: I object to it.

The Court: It may lead to something.

Q. You are the man who told us that Cooper fired Rosen because of stealing some packages?

A. Hampers.

Q. Hampers, rather. A. That is right.

Q. In 1930 or 1931, when you learned to know Rosen, when you learned to know his reputation that he was a good workman, did it come to your attention in the trade that he was in the habit of stealing packages?

4659

Mr. Turkus: That is highly reprehensible and objectionable.

Mr. Barshay: Highly reprehensible? It is most material here, sir.

A. I could answer it negatively, anyhow.

4660

Max Rubin—For People—Cross

Mr. Barshay: I ask your Honor to have the jury disregard Mr. Turkus's remark, and that it be stricken from the record.

Mr. Turkus: Mine was an objection.

The Court: I thought it was an objection.

Mr. Turkus: It was, your Honor.

The Court: The Court's affair, not the jury's. The witness has answered the question.

4661

Q. You did not know that? A. I did not.

Q. You did know about the time he took those racks from Cooper, for which he was fired?

Mr. Turkus: That is objectionable. There is no such testimony that was the alleged charge upon which he was fired.

The Court: It means the same thing.

A. Just what Rosen told me he was charged with and what Louis Cooper told me that he did.

4662

Q. You knew more about that than you told us, isn't that so? A. Oh, no.

Q. You suspended the people who bought those hampers or racks? A. What did I do?

Q. You suspended them from the union. Were the names Siegel and were the names Epstein? A. Siegel and Epstein?

Q. Yes. A. I put them back to work after they were fired, you mean. I did not suspend them. They went right back to work, because I had enough power in New York to put them back, and they went right back to work and I don't remember Epstein. Which one is Epstein? I remember this Siegel. We used to call him Galitz.

Max Rubin—For People—Cross

4663

The Court: How do you spell that?

The Witness: (Spelling.) G-a-l-i-t-z. He comes from Galicia, so they called him Galitz.

Q. Is he the person to whom Rosen is alleged to have sold those hampers or those racks?

Mr. Turkus: It is objected to, incompetent, irrelevant and immaterial.

The Court: Let him answer.

Mr. Turkus: It calls for hearsay.

4664

A. All I heard was that they were involved in that thing.

Q. Being involved, were they not suspended from the Expressmens Local 240? A. Positively not.

Q. Weren't they kept out of work for a considerable number of years, or for a considerable number of months, rather, and only restored when the wife of Mr. Siegel came to plead to you on their behalf? A. Positively not. He went right to work.

4665

Q. How long was he out? A. Two days, three days. Dave Siegel was the boss, and I was able to speak to him. I said, "Put him back to work," and he put him back to work. I don't remember who this Epstein was. If you tell me where he worked, I may recollect who that particular party is.

Q. Did you check whether or not Rosen stole those things from Mr. Cooper? A. I was not interested. I wanted him to go back to work.

Q. The stealing of things may be a cause for discharge in the minds of some people, Mr. Rubin, isn't that so?

4666

Max Rubin—For People—Cross

Mr. Turkus: I object to that.

The Court: Sustained.

Mr. Barshay: Exception.

Q. It was in the mind of Mr. Cooper?

Mr. Turkus: You would have to have a mind reader to know that.

The Court: Is there an objection?

Mr. Turkus: There is.

4667

The Court: Sustained.

Q. Mr. Cooper told you that?

Mr. Turkus: Objected to as repetitious, already answered.

The Court: Sustained.

Q. Mr. Rosen told you that?

Mr. Turkus: That is repetitious and objectionable.

4668

Q. Isn't that so?

Mr. Turkus: I have an objection.

The Court: Sustained.

Mr. Barshay: I never asked that on cross examination, your Honor.

Mr. Turkus: You did, just before this.

The Court: What differences does it make what Rosen told him?

Q. Did you know when Sobler and Bluestein left the Garfield? A. I did not.

Q. And started the New York & New Jersey?

Mr. Turkus: Objected to as repetitious.
The Court: Overruled.

Q. Did you? A. I did not know the date, no.

Q. Was it 1927? A. I can't tell you that.

Q. Did you know that they had been competing with the Garfield? A. I can't tell you from what year on.

Q. Well, at the time you joined the Local,—that is 1927 according to your own language,—did you know that? A. I can't tell you whether they started in that year to compete with Louis Cooper.

4670

Q. Did you know that Rosen at that time went out to Pennsylvania to build up a route for himself? A. I can't tell you that, whether he went out or Kelly went out or they both went out, but they had a route in Pennsylvania.

Q. Let us go step by step. Did you know Kelly before you knew Rosen? A. No, I would not say I did. Do you mean before they became partners?

Q. Before they became partners. A. I saw them in the district.

Q. Did you know that Kelly was operating in New Jersey and Pennsylvania? A. I only knew him to operate in New Jersey.

Q. In New Jersey? A. That is right.

Q. And he was doing non-union work? A. Absolutely non-union work.

Q. Did you know that Rosen at that time was also doing non-union work? A. If he was with Kelly, he was doing non-union.

Q. Before he was with Kelly. A. I can't answer that.

4671

4672

Max Rubin—For People—Cross

Q. Did you know that Rosen would go to the small towns in Pennsylvania and solicit the Chambers of Commerce to invite New York manufacturers to build their factories to avoid union competition? Did you know that? A. Well, he may have done it. All the contractors usually did it. Those contractors that went out of town would do it. It was quite common.

Q. It was a very common thing in those days? A. Yes.

4673

Q. And the more people that left New York, contractors or manufacturers, the less success the union had in New York, isn't that so? A. That is right.

Q. The more work taken from New York, the less powerful the union? A. That is right.

Q. So the union's job was to try to limit it as much as possible, and even to avoid it? A. That is right.

Q. And it was the union's job to call stoppages? A. That's right.

Q. It was the union's job to call strikes? A. That is right.

4674

Q. Considered lawful to call a stoppage and considered lawful to call a strike? A. That is right.

Q. And it was considered lawful for the settlement of the strike to allocate work to the various truck drivers for the various contractors, is that so? A. Yes.

Q. They do that now, don't they? A. Yes, except with the truck drivers. They are usually fixtures in the house. The truck drivers were usually fixtures in a house and there was hardly any change.

Q. Sometimes there were changes? A. Sometimes.

Q. You yourself have changed truck drivers from one house to the other? A. I did in one case, yes.

Q. That was perfectly lawful, perfectly proper? A. It was a necessity.

Q. Yes, but it was perfectly recognized as lawful? A. I don't know how lawful it was.

Q. You did not do anything illegitimate? A. It was not illegitimate, but when I look back now, it was not such a sensible thing to do.

4676

Q. They are doing it now? A. I do not know; I have not been there since,—

Q. You have been a labor—

Mr. Turkus: The time was shut off.

Q. Since when? A. '39.

Q. They did it as late as 1939? A. I don't think so. It is a rare course.

Q. You mean to say that unions— A. I am talking about the truckmen.

Q. Do you mean to tell me that unions did not and don't now allocate work for every truckman to deal with certain houses and say to them, "You will take this manufacturer, and you will take the other"?

4677

Mr. Turkus: I object to it.

A. It is very rare in the clothing industry, very rare.

Q. Do you know that is an unlawful thing to do?

4678

Max Rubin—For People—Cross

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Do you know that in April of 1931 Rosen was not meeting with any success in building a route in Pennsylvania? Did you know that? A. Who was he partners with at the time?

Q. Himself A. I can't tell you that.

Q. You did not know that? A. No, I didn't.

4679

Q. You did not hear it in the union? A. No.

Q. You know he had no trucks? A. I didn't know that.

Q. You had been in this Expressmen's Local Union since 1927, and I am talking now about the early part of 1931. A. I would not know that, whether he was trying to get—

Q. That was four years of active work in this local as business agent, with only eighty members belonging. A. I would not know whether he went to Pennsylvania to look to build up a business.

4680

Q. Did you hear it in the trade? A. I did not.

Q. Did you know that at that time Rosen and Kelly had agreed to form a partnership under Kelly & Rosen, Incorporated? I am speaking of April, 1931. A. I only know that at one time they started to go to Pennsylvania in relation to that one particular contractor that went up there.

Q. Named Goldstein or something like that? A. No, an Italian fellow.

Q. Was it in April of 1931? A. I cannot tell you the time; no, sir.

Q. Did you know that it was agreed that Rosen should contribute whatever customer or

customers he had in Pennsylvania and that Kelly would contribute the trucks that he had and that they were to form a partnership in April of 1931, and each was to have fifty per cent of the business? A. I would not know that, no, sir.

Q. Did you know that Rosen's share was to be his contribution toward the incorporation expenses and Kelly's was to be likewise, in April of 1931? A. I would not know that.

Q. Did you know that the deal did not go through because Rosen in April of 1931 could not and did not pay his share of the incorporation expenses? Do you know that? A. No.

4682

Q. Do you know that is why the firm never went into existence as Kelly & Rosen, Incorporated? Did you know that? A. No.

Q. Did you report to the Amalgamated the names of the manufacturers who used non-union contractors?

Mr. Turkus: I object unless the time be fixed.

Q. 1931, 1930, 1929, any time after you became connected with Local 240?

4683

Mr. Turkus: Further objection, it is repetitious.

The Court: Let him answer.

A. Whenever I knew of any, I would report it.

Q. Did you know which one of these Rosen served in Pennsylvania? A. No, only—

Q. Can you name one? A. Yes, I could name one.

4684

Max Rubin—For People—Cross

Q. Yes? A. But I don't know the year.

Q. The only time that I am speaking of and the only time I thought that of your own knowledge Rosen went to Pennsylvania was about 1930 and 1931. A. Yes, that would be the time that I know. There was a concern named Goodstein Bros. that went out of town, and a contractor by the name of Ferraro, Johnny Ferraro, went out of town. That is the only one that I can remember.

4685

Q. Do you know Rosen personally, without Kelly, served them as truckman? A. I do not know whether it was with or without Kelly, but I know they drove for them.

Q. Do you know that, out of pity, after Mr. Rosen failed to pay his portion of the incorporation expenses, Kelly just let Rosen stay on with him? Do you? A. No, I don't.

Q. Did you know that business in 1931, the period that I speak of, was so bad for Rosen that he was allowed by Kelly to keep the few dollars that he collected from the contractors? A. I would not know that.

4686

Q. Did you know that they struggled along until November of 1931 and then agreed to combine with Sobler and Bluestein and conducted the New York & New Jersey Corporation? A. That is when I really knew about them.

Q. Were you instrumental in getting them together? A. No, sir.

Q. Did you know that—

Mr. Turkus: There is an answer that is not responsive to the question. I am going to ask it be stricken because it may be ambiguous and confusing.

Mr. Barshay: Let us have the question and the answer.

(The following was read by the reporter: "Q. Did you know that they struggled along until November of 1931 and then agreed to combine with Sobler and Bluestein and conducted the New York & New Jersey Corporation? A. That is when I really knew about them.")

Mr. Turkus: I object to that.

The Court: Strike it out.

4688

Mr. Barshay: Take an exception.

Mr. Turkus: May the witness be permitted to answer the question, because under that state of affairs that answer was not responsive to the question.

The Court: Read it, please.

(The same question was read by the reporter.)

The Witness: I would not know that about the struggling and all that.

Q. Did you know that when Kelly and Rosen were together they could not even afford a book-keeper in 1931? A. I don't know that.

4689

Q. You did not hear that in the trade? A. No.

Q. Did you know that then Rosen was borrowing from all the express drivers that belonged to your union? A. Never heard of it.

Q. Did you know that Rosen could not even afford to pay the dues in your union? A. I don't think he belonged to it.

Q. There was a time when he did belong. A. That was much later.

4690

Max Rubin—For People—Cross

Q. Did you know that your union dropped him for non-payment of dues?

Mr. Turkus: Object to it unless the time be fixed. Has nothing to do with his credibility or the Rosen murder.

The Court: Sustained as immaterial.

Mr. Barshay: I take an exception. May I urge the Court the reason for my proceeding with this line of questioning?

4691

The Court: You don't need to urge, you can tell me, if you want to make it clear.

Mr. Barshay: Mr. Turkus has advanced the theory that Rosen was forced out of a prosperous business. I am trying to disprove that theory by facts which would show that no such theory could have existed, because Rosen was impoverished from the beginning, and I am trying to establish it in the only way I can.

4692

The Court: The ruling stands.

Mr. Barshay: Exception.

Q. New Jersey and Pennsylvania then was open territory? A. Yes, I believe there was a certain section of Pennsylvania that had single knee pants. That is the other end. But the part that Rosen went was non-union, and New Jersey, the section that Louis Cooper went and Bluestein, took non-union work—Bluestein, Sobler—was practically a non-union territory. There was a union shop here and there, but not much of it.

Q. Do you know that the financial strength and numerical strength of the Amalgamated at that time in New York was very weak? A. 1931?

Q. Yes. A. Yes, I think that was during that—

Q. And that was because—

Mr. Turkus: There was an answer shut off.

A. (continued) It was during the slump. There was a period during 1931, a very bad period.

4694

The Court: You mean hard times?

The Witness: That is right.

Q. And that slump was enhanced by the moving of the contractors and manufacturers out of the city, isn't that so? A. I think you are right.

Q. So that the New York & New Jersey, which was owned by Sobler and Bluestein, was in competition with Kelly and Rosen in those Pennsylvania territories.

4695

Mr. Turkus: Objected to. There is no such testimony.

Mr. Barshay: I am asking him.

Mr. Turkus: I object to the form of the question. The "so" infers there has been such testimony in the record. When you say "so", the implication and the inference is that he has so testified. I object to the form.

The Court: Sustained.

Mr. Barshay: Exception.

4696

Max Rubin—For People—Cross

Q. Did you know that? A. If they went to Louis Cooper's territory they would compete. It would be natural.

Q. You knew that to be the fact? A. Louis Cooper had his house pretty well sewed up and it was very hard to get into that territory.

4697

Q. Did you know that Kelly and Rosen, and Sobler and Bluestein were competing with each other more than they were competing with Louis Cooper of the Garfield? He was too big to compete with, wasn't he? A. That would be quite probable.

Q. And so—

Mr. Turkus: I ask that it be stricken. This is hearsay, obviously.

Mr. Barshay: He says he knows of his own knowledge.

The Witness: No, I said it would be probable.

4698

Mr. Barshay: I asked if he knew those things of his own knowledge by virtue of his position as business agent for the Expressmen's Local.

Mr. Turkus: The answer indicates the witness does not know, when he says, "probable." That is speculation.

The Court: Read the question.

(Question read by the reporter.)

The Witness: Actually I do not know.

Q. Were you told that?

Mr. Turkus: I object to that.

Q. Were you told that by Sobler or Bluestein or Rosen or Kelly?

Max Rubin—For People—Cross

4699

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Did you learn it in the official connection that you had with the Expressmen's Local then?

Mr. Turkus: I object to the form of the question.

The Court: Sustained as calling for a conclusion.

Mr. Barshay: Exception.

4700

Q. Did you know the lawyer who closed the deal between the New York & New Jersey and Kelly and Rosen? A. Do I know his name?

Q. Yes: A. Maybe if you told me. I don't know.

Q. Did you know him without knowing his name?

Mr. Turkus: I object to that. That is a peculiar question. I do not understand it. "Did you know him without knowing his name?"

4701

Mr. Barshay: You can know people without knowing their names. Mr. Turkus.

The Court: Did you know his name?

The Witness: Not offhand, no.

Q. Was it Eisenberg? A. I never heard of him.

Q. Was it Salzman? A. I never heard of him.

Q. Was it either one? A. I never heard of them.

Q. Did you know that Sobler and Bluestein at

4702

Max Rubin—For People—Cross

that time had four trucks and agreed to contribute that to the new corporation?

Mr. Turkus: I object to it. He has already indicated by his testimony that he did not know of the arrangements.

The Court: Yes or no, did you know that?

The Witness: You mean Kelly and Rosen?

4703

Q. I say Sobler and Bluestein agreed to contribute to the new organization to be composed of Kelly, Rosen, Sobler and Bluestein? A. I can't remember.

Q. Did you know that they agreed to contribute four trucks? A. I can't tell you that.

Q. Did you know the financial condition of the New York & New Jersey at that time before this new combination was to come into existence? A. No, I don't know.

Q. Did you know that the New York & New Jersey's trucks were all fully mortgaged?

4704

Mr. Turkus: I object to it. He just said he does not know the financial condition so the answer to this is obvious; he could not know.

Mr. Barshay: He can answer it if he does not know.

Mr. Turkus: I object to it. It has nothing to do with the case, waste of time after that answer.

The Court: Overruled.

Mr. Barshay: I object to counsel saying—

Max Rubin—For People—Cross

4705

The Court: Do you know that?

The Witness: I do not know anything about the finances.

Mr. Barsbay: May we have an objection in legal form and not by saying it is a waste of time?

The Court: The Court won't direct the verbiage of an objection.

Q. Did you know that Rosen agreed for his 25 per cent interest in this corporation to pay \$5,000 by deducting \$250 each and every year out of the earnings, if there were any?

4706

Mr. Tarkus: Object to it.

Q. Did you know that?

Mr. Turkus: Object to it. He just said he knew nothing of the financial conditions.

The Court: Do you know anything about it?

The Witness: I don't; no, sir.

4707

Q. Did you know that the formal contract for the new corporation was entered into on November 2, 1931, and that Rosen's shares were held in escrow? Did you know that? A. No.

Q. Did you know that the new corporation agreed to assume the existing indebtedness of Kelly and Rosen of \$1521?

Mr. Turkus: That is objected to. The witness has said he knows nothing of it. This could go on ad infinitum.

The Court: Do you know?

The Witness: I do not.

4708

Max Rubin—For People—Cross

Q. Did you know from the very first week that the partners were unable to draw any salaries whatever? Did you know that? A. No, sir.

Q. Didn't Rosen tell you that at any time? A. No, sir.

Q. Did Kelly tell you that at any time? A. No, sir.

Q. Was the firm the subject of discussion in your union? A. No.

4709

Q. Did you know that from the very beginning both Kelly and Rosen kept the accounts they collected and they did not contribute it to the new corporation? Did you know that? A. I would not know that, no, sir.

Q. Did you know that the State of New Jersey instituted proceedings in 1931 for failure of this new corporation to even pay its franchise tax? A. I didn't know that.

4710

Q. Would this refresh your recollection, or would it bring to your mind a reconstructed recollection of whether or not you may have known it? Did you look at this instrument, please? A. You want me to read that part that you have with X's?

Q. No, just to yourself. A. I see here a name.

Q. Just to yourself, please. Now look at the outside of that book.

Mr. Turkus: The question is if it refreshes your recollection, not to read it into evidence.

Mr. Barshay: I am not asking him to read it into evidence, Mr. Turkus, I expressly said "Read it to yourself," didn't I, Mr. Rubin?

The Witness: That is right.

Max Rubin—For People—Cross

4711

Mr. Turkus: Nobody quarrels with that.

Q. Does that reconstruct your recollection, sir?

A. No, it does not.

Mr. Barshay: Will you mark it for identification.

(Marked Defendants' Exhibit T for identification.)

Q. Did you know that Kelly's lawyer in April of 1932 filed a petition declaring that corporation in insolvency? This is April of 1932. A. I did not know that, no, sir.

4712

Q. You said you did not know the lawyer whose name was Henry H. Eisenberg, 58 Broad Street, Elizabeth, New Jersey? A. I never heard of the name before.

Q. Did you hear or do you know personally of the action that he started, Martin F. Kelly, Incorporated, a corporation of New Jersey, against the New York & New Jersey Clothing Transportation Company, Incorporated? Did you know that? A. No, I didn't.

4713

Mr. Barshay: May we mark this for identification.

(Marked Defendants' Exhibit U for identification.)

Q. Did you know that in settlement of this petition Kelly withdrew his two trucks that he put in and that the corporation agreed to assume the garage and fuel expenses and in addition

4714

Max Rubin—For People—Cross

gave Kelly two notes for \$100 each—\$150 each—each of which came back unpaid? Did you know that?

Mr. Turkus: Objected to. He says he never knew about the lawyer, never knew about the lawsuit. How could he know about that?

The Court: Do you know about that?

The Witness: I do not.

4715

Q. You never heard that discussed with respect to Rosen? A. No.

Q. Wasn't it the subject of discussion at the various meetings or subjects of discussion preliminary to meetings of your association? A. No, sir, never.

Q. Didn't you see Rosen around the union borrowing money or attempting to borrow money? I am speaking now of April, 1932, before the stoppage. A. I never have, no, sir.

Q. Did you know a man by the name of Goldman who worked for the New York & New Jersey? A. Yes.

4716

Q. Did you speak to him? A. He was a member of the union.

Q. Did you speak to him?

Mr. Turkus: Objected to.

A. Of course.

Mr. Turkus: As already answered.

Mr. Barshay: He may be a member of the union without speaking to him.

The Witness: Not that union.

Q. In other words, everybody brought their complaints to you? A. Everybody spoke to each other. It was a small group.

Q. Did you know that Goldman was unpaid to the extent of \$700 by the New York & New Jersey Transportation in April of 1932? A. No, I did not.

Q. Did he ever tell you that? A. No, sir.

Q. Did he ever enlist your aid in trying to speak to the members of the corporation to pay him that money? A. No, sir.

Q. Did you place him in another job? A. I think I sent him from there to Louis Cooper in Passaic.

4718

Q. Did you? A. I do not know. He went to Passaic. I do not know whether he went from that job or not.

Q. Do you know the reason he quit the New York & New Jersey? A. I can't tell you the reason.

Q. Do you know it was for nonpayment of wages? A. No, I don't.

Q. Do you know that they gave him checks of \$30 and \$35 and they were not paid? A. With Sobler being there?

4719

Q. With Rosen, Sobler and Bluestein remaining after Kelly left. A. Sobler is a very rich man. I can't understand that.

Q. You know Mr. Sobler then was a member of a corporation? You know that? A. I did not know that.

Q. Well, he was a member of the New York & New Jersey and you say he is a very rich man. You mean now? A. At that time, as far as I know.

4720

Max Rubin—For People—Cross

Q. He did not own the company as an individual, did he? A. No.

Q. To your knowledge? A. No.

Q. He did not obligate himself to run this corporation as an individual? You understand that? A. Yes.

Q. Did you place Plotkin with the New York & New Jersey Corporation? A. I don't remember that.

Q. You did not? A. I don't remember.

4721

Q. You said before you transferred some truckman from one concern to another. Is Plotkin the name of that man? A. I don't know.

Q. Did you know Plotkin worked for Fvirsky? A. That is right.

Q. Did you know that Fvirsky expressed for Greenbaum? A. That is right.

Q. Aren't you the person who transferred Mr. Plotkin from Greenbaum to the New York & New Jersey?

Mr. Turkus: I object unless the time be fixed.

4722

Q. In 1932. A. That is right. It was not a transfer. He went along with the house. He went along with the Fvirsky Clothing house. That was the main house of this Greenbaum and he went along with this house and he went with the New York & New Jersey on that basis.

Q. In other words, the New York & New Jersey got a new house? A. That is right.

Q. To cater to? A. That is right.

Q. And express for? A. That is right.

Q. You are responsible for that situation or did you aid in that situation? A. I aided.

Q. Plotkin was one of the men who went along?

A. He was the man.

Q. He was the only man? A. I think so.

Q. Now do you recall that the very first week he finished his work with the New York & New Jersey, a little after April of 1932 or thereabouts, there was not sufficient money to pay his his wages? I am speaking before the stoppage. A. I can't recall that, no, sir.

Q. Didn't he complain of that fact to you?

A. I don't remember it if he did.

4724

Q. Didn't Plotkin tell you that the first Saturday that he was there, the first pay day, all the workmen were lined up waiting for their money and they did not get it? Didn't he tell you that?

A. No, sir. I do not remember. He may have but I don't remember.

Q. Didn't he beg you to take him back from that concern and put him back? A. No.

Q. He did not tell you that? A. No, sir.

Q. Didn't he tell you how he pleaded with Rosen that he must have his money? Didn't he tell you that the arrangement was made immediately after the first week that Fvirsky was to pay Plotkin directly and charge it to the New York & New Jersey account and that was the only way Plotkin could get his weekly wages? Didn't he tell you that? A. I can't recall that.

4725

Q. He may have? A. May have, but I can't recall.

Q. It would be part of your job to know? A. It would be.

Q. You won't deny that he did? A. Of course not.

Q. Did Plotkin tell you "what kind of a con-

4726

Max Rubin—For People—Cross

cern did you send me to? The workmen, one says 300, one says 400, one says 500, and there was no answer from the New York & New Jersey"; did he tell you that?

Mr. Turkus: Objected to as repetitious, incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Barshay: Exception.

4727

Q. Did you know that the garage seized the trucks of this New York & New Jersey for non-payment?

Mr. Turkus: Object unless the time be fixed; further, that it is incompetent, irrelevant and immaterial.

The Court: Overruled.

Q. I am speaking of the period before the stoppage. You understand, Mr. Rubin? A. Yes. I heard that the trucks were seized but I would not know where I heard it.

4728

The Court: Do you know it?

The Witness: I do not know it only what I heard.

Q. Did you know that they stored their trucks in Pink's garage in Passaic, New Jersey? A. No, I do not.

Q. Did you know that in disgust Rosen left the New York & New Jersey? Did you? A. No.

Q. Because he could not draw any money there? A. I would not know that.

Q. Did you know that the bookkeeper was

getting only five or six dollars a week? A. I did not know that.

Q. You never attended their place of business?

A. No, I was in there once in a while and there did not seem to be that poverty there that you speak about.

Q. There was poverty, wasn't there? A. Nothing along the lines you mentioned. I thought they had a very good business.

Q. Is that why the petition in insolvency was filed?

Mr. Turkus: Just a minute.

A. It surprises me.

Mr. Turkus: He has answered it now.

Q. It is a surprise to you? A. Yes.

Q. Do you want to look at this petition, Mr. Rubin?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Did you know that their bank account never exceeded the sum of \$100 as an average balance?

A. I would not know that.

Q. In your visits there, were you not told that fact?

Mr. Turkus: Objected to. That would be hearsay.

The Court: Sustained.

Mr. Barshay: Exception.

4732

Max Rubin—For People—Cross

Q. Did you know that the telephone company brought action against them for nonpayment of their telephone bills? This is before the stoppage, Mr. Rubin.

The Court: Do you know anything about it?

The Witness: Not a thing.

4733

Q. Do you know when Mr. Rosen left the New York & New Jersey? A. At the time of the stoppage.

Q. About when was that? A. In the summer, I believe, or maybe the fall of 1932.

Q. The stoppage was in August, 1932. A. I do not know the date.

Q. I will remind you it was August 4, 1932. A. It was around that time. I do not know the date.

Q. Well, between August 4th and August 12th. Did you know how much money Rosen drew from the New York & New Jersey before the stoppage? A. I do not.

4734

Q. You said a little while ago that it was not the poverty that I described. Is there a poverty which you can describe based on your own knowledge and observation before the stoppage? A. My opinion is that they had a darn good business.

Q. It is only your opinion. I am now asking of your personal knowledge.

Mr. Turkus: He has already told him that he did not know anything of his personal knowledge. He has been telling him that for a half an hour. I object to it.

The Court: That is what he said.

Max Rubin—For People—Cross

4735

Q. You said it was not the poverty I described.

Mr. Turkus: I object to it. That is a play on words. It is objectionable.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Well, you yourself on direct examination said that Rosen said that they had a little business in Pennsylvania? A. That is right.

Q. "Little" you mean financially little? A. It was a small business. That would mean financially small also.

4736

Q. You knew that Rosen had no trucks of his own? A. I did.

Q. No visible assets of his own? A. That is right.

Q. No garage? A. That is right.

Q. No employees? A. That is right.

Q. Whatever he could build up in Pennsylvania under non-union shop was all he had, wasn't that so? A. That is right.

Q. Let us get down to the stoppage. Tell me, who calls the stoppage, Mr. Rubin? A. As far as I know, Sidney Hillman. He was out on the picket line every day with his wife, walking up and down,—thousands of people marching up and down Fifth Avenue—so I figured that he must have called it.

4737

Q. Who else had the power to call the stoppage? A. The Joint Board in conjunction with the Cutters' Union.

Q. In other words, no one individual does it, but the organization through its elected officials or organization officials? A. Yes, officially it

4738

Max Rubin—For People—Cross

would be done that way, though one man would simply suggest it.

Q. This stoppage was called according to the rules of the organization? A. Yes.

Q. By the officers? A. That is right.

Q. The defendant Buchalter did not call it, did he? A. The stoppage?

Q. Yes. A. No.

4739

Q. He had no power to call it, did he? Yes or no. A. No, he was not in on any of the conferences with the union officials, if that is what you mean—I mean with the actual organization.

Q. So, Mr. Rubin, that is a condition that occurred through no action of Mr. Buchalter?

Mr. Turkus: Objected to. That is not the testimony.

Mr. Barshay: The stoppage, I am speaking of.

Mr. Turkus: That is not the testimony either.

Mr. Barshay: He just said that.

4740

Mr. Turkus: No, he did not.

The Court: Sustained.

Mr. Barshay: Exception.

Q. Was the stoppage called by the duly-constituted officers of the union?

Mr. Turkus: That is objected to as repetitious.

Q. To your knowledge?

Mr. Turkus: That is objected to as repetitious.

The Court: Overruled.

A. To my knowledge it was called by the actual officials of the organization.

Q. Mr. Buchalter at that time was not a member of the organization, an official of the organization, was he? A. He was not.

Q. Now, the stoppage is called, as you say, and then it is executed; isn't that so?

Mr. Turkus: Objected to. I do not know whether this is a general discussion of stoppages or whether it is the stoppage that we are referring to in this particular case.

4742

Mr. Barshay: I am only speaking of this stoppage, and the witness is clear about it and he has been answering it just that way.

Mr. Turkus: I object to the form of the question as being ambiguous.

The Court: The testimony under direct was that Buchalter once told the witness that Katz wanted a stoppage of all clothing trucks, as the New York business was going to Pennsylvania, and he told Buchalter that he had doubts about stopping Cooper of Garfield, and New York & New Jersey, also the Branch Stores.

4743

Mr. Barshay: I am not up to that yet, your Honor.

The Court: You may cross-examine on that.

Mr. Barshay: That is exactly what I am trying to do.

The Court: He said in 1932 he told Buchalter that the New York & New Jer-

4744

Mar Rubin—For People—Cross

sey and Rosen objected to the stoppage, also Sobler, and Buchalter wanted to see Rosen at that time about it, at 20th Street off 5th Avenue. That is properly subject of cross examination.

Mr. Barshay: Do you want to recess, your Honor? I will be quite a while with this witness yet.

The Court: How long do you expect to be?

4745

Mr. Barshay: I have twenty pages of notes that I must cover, your Honor.

The Court: I do not know what that means. You do not think you can conclude this afternoon?

Mr. Barshay: Oh, no, undoubtedly I cannot.

The Court: Gentlemen, please do not discuss the case. Let nobody talk to you about it. Keep your minds open and remember all of the admonitions and restrictions heretofore directed.

4746

Everybody will kindly remain in order. First let the witness pass out. Let the jury go by the other door.

Ten o'clock tomorrow morning.

Defendants are remanded.

(Whereupon an adjournment was taken to Thursday, November 6, 1941, at 10:00 A. M.)

(CONTINUED IN VOLUME III)